

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

15 Cr. 348 (PGG)

5 SANDY GOMEZ,

6 Trial

7 Defendant.

8 -----x

9 New York, N.Y.
10 November 10, 2016
9:45 a.m.

11 Before:

12 HON. PAUL G. GARDEPHE,

13 District Judge
14 -and a Jury-

15 APPEARANCES

16 PREET BHARARA

17 United States Attorney for the
Southern District of New York

18 PATRICK EGAN

RICHARD A. COOPER

19 SHAWN G. CROWLEY

Assistant United States Attorneys

20
21 NATALI J.H. TODD

Attorney for Defendant

(Jury present)

THE COURT: Good morning, ladies and gentlemen. We will now hear the cross-examination of Mr. Gomez.

SANDY GOMEZ, resumed.

CROSS-EXAMINATION

BY MR. COOPER:

Q. Good morning, Mr. Gomez.

A. Good morning, sir.

Q. You mentioned on direct examination that you worked for a company called JTM for a few years, is that correct?

A. Yes, sir.

Q. That company, JTM, they carry GMC products, right?

A. Yes, sir.

Q. And that includes products for Yukon Denali cars?

A. Yes, sir.

Q. And you're familiar with Yukon Denali cars, right?

A. I don't understand the question.

Q. Are you familiar with Yukon Denalis, that kind of car?

A. Not really.

Q. You used to own a Yukon Denali, right?

A. No, sir. I used to own a Chevy Tahoe.

Q. It's your testimony here today that you never owned a Yukon Denali in the past?

A. Yes.

Q. Now, you were a professional driver, right, sir?

1 A. I'm still a professional driver.

2 Q. For many years your job was to drive, correct?

3 A. Yes, sir.

4 Q. I want to ask a few questions about this case. Sir, you
5 were arrested in this case in December 2014, isn't that right?

6 A. Yes, sir.

7 Q. And after you were arrested you received discovery in this
8 case, right?

9 A. Yes, sir.

10 Q. And that discovery included that dashboard camera video
11 that we all saw in court yesterday, is that right?

12 A. Yes, sir.

13 Q. And that discovery included reports on surveillance that
14 the DEA conducted when you were down in Louisiana, right?

15 A. Yes, sir.

16 Q. And you got the recordings of your conversations with the
17 confidential source, right?

18 A. Yes.

19 Q. And you got recordings of your brother's conversations with
20 the confidential source, right?

21 A. Yes.

22 Q. Those are the recordings that we saw at trial this week,
23 right?

24 A. Yes, sir.

25 Q. And you reviewed that material?

1 A. Yes.

2 Q. And we had a hearing in this case a few months ago, isn't
3 that right?

4 A. Yes, sir.

5 Q. And you prepared for that hearing, didn't you?

6 A. Yes, sir.

7 Q. In fact, you put in an affidavit. You swore to an
8 affidavit that you submitted to the Court here, right?

9 A. Yes, sir.

10 Q. And in preparation for that hearing you again reviewed all
11 those discovery materials, isn't that right?

12 A. Yes.

13 Q. And in preparation for trial here today you got more
14 materials, right?

15 A. Yes, sir.

16 Q. And you reviewed those materials?

17 A. Yes, sir. With my lawyer.

18 Q. And you reviewed reports by the officers and the agents who
19 testified on the stand here this week?

20 A. I don't understand what you mean, when you say I review.

21 Q. You got reports and documents that were prepared by the
22 agents and the officers who testified here this week, isn't
23 that right?

24 A. Yes.

25 Q. And before trial you looked at them, right?

1 A. My lawyer discuss it with me.

2 Q. And with respect to the transcripts and the translations,
3 do you remember those? Those were Government Exhibits 201T
4 through 207T. We took a look at those?

5 A. Yes, sir.

6 Q. You saw those before trial as well, right?

7 A. Yes, sir.

8 Q. Now, Mr. Gomez, I want to talk a bit about when you first
9 came up to New Jersey in November 2014. For a period of time
10 there you stayed with your brother Jorge, right?

11 A. Could you repeat that question because you said did I stay?

12 Q. You came up to New Jersey, your testimony is, in November
13 2014, right?

14 A. Yes, sir.

15 Q. In late November?

16 A. Yes, sir. The 22nd of November.

17 Q. November 22?

18 A. Yes, sir.

19 Q. And you testified on direct examination that first you were
20 staying with, was it your sister?

21 A. My sister.

22 Q. And then at some point in time things got too crowded, so
23 you went to stay with your brother, Jorge, right?

24 A. Yes, sir.

25 Q. That's Jorge Gomez, the individual we have been speaking

1 about this week?

2 A. Yes, sir.

3 Q. Now, at that time Jorge was not living with Caronlay

4 Ramon-Baez, right?

5 A. No.

6 Q. They had broken up before that?

7 A. I didn't know nothing about that.

8 Q. Jorge was in fact living with his wife, right?

9 A. Well, when I went to his apartment, he said that was his
10 girlfriend. Like I said, I never knew -- I didn't know his

11 relationship, what it was, his status.

12 Q. You saw that he was living with a woman at that apartment,
13 right?

14 A. Yes, sir.

15 Q. That was the apartment that you went to stay at?

16 A. Yes, sir.

17 Q. And that woman was not Caronlay Ramon-Baez, right?

18 A. No, sir.

19 Q. It was somebody different?

20 A. Yes.

21 Q. Now, when you came up to New Jersey in November of 2014,
22 you had never met Caronlay Ramon-Baez at that point, right?

23 A. No.

24 Q. Hadn't spoken to her on the phone?

25 A. No.

1 Q. Never met her in person?

2 A. No.

3 Q. It was the first time on November 22, or some time around
4 there, that you met her, right?

5 A. Yes, sir.

6 Q. Let's talk about your first trip down to New Orleans. Your
7 testimony on direct examination was that Jorge and Caronlay
8 were having some problems, right?

9 A. Yes, sir.

10 Q. They were having fights, they had broken up?

11 A. That's what he told me.

12 Q. And his testimony is that Jorge asked you to take Caronlay
13 down to New Orleans, right?

14 A. Yes, sir.

15 Q. And your testimony was that they needed some time apart?

16 A. Yes, sir.

17 Q. She needed somebody to go with her?

18 A. Yes.

19 Q. To comfort her?

20 A. Not that way. He just told me to keep her company because
21 he knows I'm from out of town and I knew the area. She didn't
22 know very much about over there.

23 Q. Your testimony is Jorge knew that you knew the area, right?

24 A. Yes.

25 Q. You knew New Orleans?

1 A. Not like that, but I'm a truck driver, so he figured I
2 would know the surroundings.

3 Q. Is it your testimony that Jorge knew that you were a truck
4 driver?

5 A. Yes.

6 Q. And so believed that because you were a truck driver you
7 would know your way around New Orleans, right?

8 A. Yes, sir.

9 Q. And that's the reason you say that he asked you to
10 accompany Caronlay down to New Orleans with you, right?

11 A. Yes.

12 Q. And you agreed?

13 A. Yes.

14 Q. Now, your testimony is that Jorge bought the tickets to go
15 to New Orleans, right?

16 A. Yes.

17 Q. And he bought them just the day before you and Caronlay
18 flew down to New Orleans, right?

19 A. Yes.

20 Q. Now, when you were in New Orleans you stayed over in a
21 hotel?

22 A. Yes.

23 Q. Were you and Caronlay in the same hotel room or different
24 hotel rooms?

25 A. When we arrived, the booking of the hotel, they didn't have

1 no more rooms, so they gave us a room with two beds. I asked
2 her, was it OK. And she said yeah.

3 Q. Stepping back for a second, when you came up from Texas to
4 New Jersey -- I do want to come back to New Orleans, but let's
5 go back to when you first came up from Texas to New Jersey.

6 That was, your testimony, November 22?

7 A. Yes.

8 Q. Did you meet Caronlay for the first time that same day, the
9 first day you came up?

10 A. No.

11 Q. That was the 22nd. What about the second day that you were
12 there, the 23rd?

13 A. No.

14 Q. What about the third day, the 24th?

15 A. No.

16 Q. What about the fourth day, November 25?

17 A. Yes.

18 Q. So you met Ms. Ramon-Baez on the 25th, right?

19 A. Yes.

20 Q. And you flew down to New Orleans with her the following
21 day, November 26?

22 A. Yes.

23 Q. Now, your testimony is, you get down to New Orleans and you
24 check into the hotel, right?

25 A. Yes.

1 Q. And on direct examination you testified that you stayed in
2 the hotel room for the most part and one day Caronlay went to
3 meet some friends, right?

4 A. Yes.

5 Q. When she went to meet friends your testimony is you went to
6 the casino, right?

7 A. Yes.

8 Q. The two of you separated for that period of time?

9 A. Yes.

10 Q. And your testimony is that you were in the casino for five
11 or more hours, right?

12 A. Yes, sir.

13 Q. I think you said on direct examination something like it
14 was pretty much the whole day?

15 A. Yes.

16 Q. And you happened to bump into Ms. Ramon-Baez there, right?

17 A. Yes.

18 Q. I think you said on direct examination that you were at the
19 slot machines and she happened to be passing by and that's when
20 you encountered each other after a whole day apart?

21 A. Yes.

22 Q. Now, on direct examination you also talked about why you
23 and Ms. Ramon-Baez flew back to New York, right?

24 A. Yes.

25 Q. You were planning on staying for a few more days?

1 A. Not myself. The plan was, she was going for a few days. I
2 was just accompanying her.

3 Q. Were you going to leave before Ms. Ramon-Baez?

4 A. No.

5 Q. You were going to stay there as long as she was there?

6 A. Yes.

7 Q. And the whole plan, your testimony is, that you and Jorge
8 and Caronlay agreed on is that you would go down for longer
9 than just those two days, right?

10 A. Well, he pushes the flights. It was going to be for a few
11 days that she was going to visit friends, to let her be because
12 she needed some time apart.

13 Q. Your testimony is that when you bumped into Ms. Ramon-Baez
14 in the casino, she was upset?

15 A. Yes, sir.

16 Q. I think you said on direct examination she was really upset
17 because Jorge told her she had to come home, right?

18 A. Yes, sir.

19 Q. And that was the day after you got down to New Orleans?

20 A. Yes.

21 Q. That was just two days after Jorge asked you to fly down to
22 New Orleans with Ms. Ramon-Baez?

23 A. Yes.

24 Q. And you agreed. That's your testimony?

25 A. Yes.

1 Q. And you bought tickets the same day?

2 A. I didn't buy the tickets. He did.

3 Q. Your testimony on direct examination is that Jorge paid for
4 the tickets, right?

5 A. Yes.

6 Q. You were the one who actually arranged for the flights,
7 right?

8 A. No.

9 Q. So you are saying that it was all Jorge's idea?

10 A. He -- he asked me to go, he will buy the tickets, he would
11 provide -- it was for her to spend some time away. I never
12 agree with anyone else. I was supposed to accompany her, help
13 her -- at the time they were having problems -- and I said OK.

14 Q. Your testimony is, you were just being the good brother?

15 A. Yes.

16 Q. You were just being the good friend to Caronlay Ramon-Baez,
17 right?

18 A. Yes.

19 Q. The shoulder she could cry on?

20 A. No.

21 Q. The person to escort her around New Orleans, right?

22 A. That was it.

23 Q. Before you came up to New Jersey at the end of November
24 2014, when was the last time you talked to Jorge?

25 A. I spoke to him maybe a month or so, when he was knowing

1 about the family member that passed away, just to set up
2 funeral arrangements. We were talking about how the family
3 would get together, what we were going to do, if he was going
4 to be present. The person that passed away was like a little
5 sister emotionally. We never spoke. That's the only reason we
6 were speaking, setting up, arranging, how the family was going
7 to travel, where we were to get together, and doing those types
8 of preparations.

9 Q. It was just logistics?

10 A. Yes, sir.

11 Q. Who was going to travel where, right?

12 A. Not like that. When are we going to get together, sleep,
13 arrangements, because a lot of people didn't live in the city.
14 We just scattered around. Everybody was going to come in for
15 that time, that moment in time, for a family mourn.

16 Q. For a funeral, right?

17 A. Yes.

18 Q. Making arrangements for who was going to go where, where
19 people were going to stay, right?

20 A. Yes.

21 Q. Logistics, right?

22 A. Yes.

23 Q. Now, on direct examination you testified that you didn't
24 really speak to your brother, right?

25 A. Yes.

1 Q. You pretty much only spoke to him to do the things you just
2 spoke about, to make arrangements and logistics for family
3 funerals, right?

4 A. Yes.

5 Q. You didn't have a particularly close relationship with
6 Jorge?

7 A. No.

8 Q. You didn't talk about your job, how it was going?

9 A. No.

10 Q. You didn't talk about his job and how it was going?

11 A. No.

12 Q. You didn't talk about your family and your relationships,
13 anything like that?

14 A. No.

15 Q. And he didn't do the same thing either, right?

16 A. No.

17 Q. You guys pretty much just talked about family events,
18 family funerals, logistics, that sort of thing, right?

19 A. Yes.

20 Q. Now, in this trial you've seen the transcripts, right?

21 A. Yes.

22 Q. I am going to hand to you Government Exhibit 205T.

23 MR. COOPER: May I approach, your Honor.

24 THE COURT: Yes.

25 Q. Mr. Gomez, I handed you Government Exhibit 205T, which is

in evidence.

MR. COOPER: Your Honor, there is some AV issues, but I believe the jury has transcript binders.

THE COURT: OK. Actually, there is some binders at the end that I guess the jury needs. Does everybody have a binder?

Go ahead.

MR. COOPER: Thank you, your Honor.

Q. We will get to the exact transcript in a minute, Mr. Gomez, because you've read this transcript before, right?

A. Yes.

Q. And this is a call among you, your brother is on the phone, too, and the confidential source, who we know now is Mr. Jimenez-Baez, right?

A. Yes.

Q. That's your voice on the call?

A. Yes.

Q. Where it says Sandy Gomez on the call that's you?

A. Right.

Q. You stipulated to that, right?

A. Yes.

Q. There is no question about that, right?

A. Yes.

Q. You called using your phone, right?

A. No. My brother made the call.

- 1 Q. Let's talk about the phone number. Take a look at page 1
- 2 of Exhibit 205T. You see where it says phone numbers, sir?
- 3 A. Sir.
- 4 Q. 210-727-0565. That's you, right?
- 5 A. That's a number that I had at that moment.
- 6 Q. It's your telephone number, right?
- 7 A. Yes.
- 8 Q. On your telephone?
- 9 A. Yes.
- 10 Q. And that's the phone that called the confidential source
- 11 that day, right?
- 12 A. Yes.
- 13 Q. Now, that's December 4, 2014?
- 14 A. Yes.
- 15 Q. You were with your brother that day?
- 16 A. Yes.
- 17 Q. You were at his apartment building, right?
- 18 A. Yes. He called me to come by his house.
- 19 Q. And when you got there that day you did a full inspection
- 20 of the white Denali, right?
- 21 A. He told me to check it. That was the truck I supposed to
- 22 help to get it to the new owner.
- 23 Q. My question is whether you did an inspection of the car
- 24 that day?
- 25 A. Can you explain to me what you mean by inspection.

1 Q. I think on direct examination you checked the gas?

2 A. Yes.

3 Q. You checked the fuel?

4 A. Yes.

5 Q. You checked the oil?

6 A. Yes.

7 Q. You checked the tires?

8 A. Yes, sir.

9 Q. You brought your luggage?

10 A. Yes.

11 Q. It's those two suitcases in the defense exhibit that you
12 looked at yesterday?

13 A. Yeah. But it was more than two suitcases.

14 Q. More than two suitcases.

15 You looked inside the car, right?

16 A. I didn't really look. I -- my problem was, I couldn't put
17 my luggage inside the car.

18 Q. Did you consider putting your luggage in the back seat,
19 sir?

20 A. It wouldn't fit.

21 Q. Your testimony is that your luggage wouldn't have fit in
22 the back seat?

23 A. No.

24 Q. But you ultimately managed to get your luggage into that
25 trunk, didn't you?

1 A. Yes.

2 Q. And you placed this phone call, 2005T, right?

3 A. No.

4 Q. Your testimony is, it was your phone, but your brother
5 dialed the number?

6 A. Yes. He has the phone -- he asked me for my phone, 2,000
7 number.

8 Q. And your testimony is that you thought you were talking to
9 the owner of the car, right?

10 A. That's what he told me. I am going -- his partner, the guy
11 they work together. So he could explain to me because I told
12 him the car -- the back seat was broken.

13 Q. I think your testimony on direct examination, and I just
14 want to clarify this, is that you thought that your brother and
15 this other guy were partners, right?

16 A. Yes, sir.

17 Q. And that together their job, their work was to get cars,
18 fix them up and sell them, right?

19 A. That's what he told me, that's what he was doing in
20 business.

21 Q. Sir, try to answer my question. That was your
22 understanding of what your brother was doing and what this
23 other guy was doing, right?

24 A. Yes.

25 Q. Now, let's look at the transcript. If you can turn to page

1 2, sir. Let's look four paragraphs up from the bottom where
2 you say: The issue with me is -- I'm sorry. Two paragraphs
3 above that. You say: We were checking out the car and I was
4 explaining to him that I used to have a car just like that one.
5 You see that, sir?

6 A. Yes.

7 Q. Now, when you say, myself and this guy, you were talking
8 about your brother. Jorge is the guy that you are talking
9 about there?

10 A. Yes.

11 Q. And you were checking out the car?

12 A. Yes.

13 Q. And you told the guy on the phone that you used to have a
14 car just like that one, right?

15 A. Yes.

16 Q. Let's look two paragraphs below that. You say: That car
17 has a space in there and the seats go down, right?

18 A. Yes.

19 Q. Now, your testimony on direct examination is that you were
20 concerned about having enough space in the car, right?

21 A. Yes.

22 Q. You wanted the seats to go down. That was your story?

23 A. Yes.

24 Q. Because you had luggage?

25 A. Yes.

1 Q. And because you were planning to buy some souvenirs on this
2 trip, right?

3 A. Yes.

4 Q. And you wanted to be sure that there was enough space to
5 put all that stuff in the car, right?

6 A. Yes.

7 Q. Now, it was just you and Caronlay Ramon-Baez who were going
8 to make the trip, right?

9 A. At that point I didn't know if she was coming with me or
10 not.

11 Q. So you thought it could have been just you?

12 A. Yes.

13 Q. And if not just you, maybe there would be one other person,
14 Caronlay Ramon-Baez, coming, right?

15 A. No. I never thought of that.

16 Q. I'm sorry?

17 A. No.

18 Q. You thought at that point just you, Mr. Sandy Gomez, doing
19 this trip down to New Orleans for your brother?

20 A. I wasn't doing just the trip. I was help -- doing the
21 favor, deliver the truck to its new owner, and I was going
22 home. That was the reason that I accepted to take the truck.

23 Q. The issue you were talking about here is there was a gap in
24 the back seat, right?

25 A. No.

1 Q. There was a space where the bench met the back rest?

2 A. No.

3 Q. Did you inspect that back seat?

4 A. No. The problem wasn't the seat didn't move. It was set
5 to stay still. That's why I told him, in that particular
6 vehicle I'm in, it should move down to open more space.

7 Q. Sir, my question is a bit different. Did you look in the
8 back seat where the bench met the seat?

9 A. No.

10 Q. You didn't see whether or not there was a gap there that
11 was noticeable?

12 A. No.

13 Q. Now, in the same paragraph that we were looking at,
14 Government Exhibit 205T, a few paragraphs up, you say: The
15 issue with me is, you know, when you are traveling and you go
16 to different places. Do you see that?

17 A. Yes.

18 Q. I just want to be clear. You weren't concerned about the
19 car being in Paterson, New Jersey, right?

20 A. No.

21 Q. Your concern was when you are traveling around, right?

22 That's what you say here.

23 A. That's not what I meant. What I told him was, I'm
24 traveling around. If you stop and purchase anything, you carry
25 to put anything in the trunk. I say I was carrying luggage.

1 Q. I see. Your testimony here is your main concern is that
2 you were going to buy so much stuff that they couldn't possibly
3 fit in the car, right?

4 A. No.

5 Q. That unless you put that back seat down you were going to
6 be out of luck, right?

7 A. No.

8 Q. Let's turn to page 3, the next page. You weren't concerned
9 with the engine, right?

10 A. Concerned?

11 Q. Were you concerned that the engine was going to break down?

12 A. Yes.

13 Q. You did an inspection of the car, you checked out the
14 engine before you left?

15 A. Yes.

16 Q. You were satisfied that the engine was OK, right?

17 A. I checked that everything -- fluids and everything was
18 level. Because I couldn't tell because I didn't drive the
19 truck.

20 Q. You didn't raise any concerns about the engine when you
21 called the guy that you thought was the owner of the car,
22 right?

23 A. I spoke to Jorge, and I say, everything needs to come back,
24 when the guy called me to explain to me -- my concern was, the
25 seat was broken. I didn't want to have the truck delivered to

1 the owner and then the guy say he didn't want it or complain,
2 and I would end up paying for a car that was not even mine.

3 Q. You sir didn't express any concerns about the engine of the
4 car?

5 A. That's what I was trying to explain, sir. Everything I
6 talked to my brother, when my brother put the gentleman on the
7 phone --

8 THE COURT: The question is, did you express concerns
9 to the person you believe was the owner of the car about the
10 engine? That's the question. Try to answer the question.

11 THE WITNESS: Yes.

12 Q. You did. Can you show us where in Government Exhibit 205T
13 you expressed concerns about the engine of the car when you are
14 talking to the guy you thought was the owner.

15 A. When I told him: Well, look --

16 THE COURT: Where are you reading from?

17 THE WITNESS: From the top, the full paragraph.

18 THE COURT: What page?

19 THE WITNESS: Page 2.

20 THE COURT: Page 2, what paragraph?

21 THE WITNESS: No. 4.

22 A. I told him: Well, look, you, myself and this guy, we were
23 checking the car. I was explaining to him that I used to have
24 a car just like that, that one.

25 Q. And just to be clear, and I think you can answer this

1 question with a yes or no, your testimony here right now is
2 that when you said that, you were talking about the engine?

3 A. Yes.

4 Q. And you were expressing a concern about the engine?

5 A. Well, I was concerned about the car -- yeah, the engine.

6 Q. Let's go back to page 3, sir, the bottom paragraph of page
7 3. We are going to look about halfway down. Are you there,
8 the bottom paragraph?

9 A. Um-hum.

10 Q. Halfway down you say: And I said to him that it's because
11 of the part. It's the part that makes it look different. You
12 understand me?

13 Do you see that there, sir?

14 A. Yes.

15 Q. Now, your testimony on direct examination, I want to be
16 clear about this, is that when you said that, you were talking
17 about how the seat in the back didn't lay down flat, right?

18 A. Yes.

19 Q. To expand the trunk?

20 A. Yes.

21 Q. That's what you were saying when you were talking about
22 part?

23 A. Yes.

24 Q. You are saying that this isn't a conversation about how
25 some parts of the car looked different from the others?

1 A. No, sir.

2 Q. And you are saying on the stand here now that this isn't
3 about the molding underneath the back seat looking different
4 from the other molding in the car?

5 A. Yes, sir. It wasn't about that.

6 Q. Let's turn to page 5, sir.

7 Before we talk about the transcript, again, one
8 question. You said earlier in this transcript when you were
9 talking about that you used to have a car, a car just like that
10 one --

11 A. Yes.

12 Q. -- were you talking about the Tahoe that you used to have?

13 A. Yes, sir.

14 Q. Not a Yukon Denali?

15 A. No, sir.

16 Q. Let's look at the bottom of page 5, please. So you say
17 there, and this is about halfway down at the very bottom
18 paragraph, you say, The problem is that where it's going, those
19 people check everything, but don't worry, it's fine. Let me
20 see what we are going to do.

21 Do you see that?

22 A. Yes.

23 Q. To be clear, on direct examination you were asked about
24 that sentence there, right?

25 A. Um-hum.

1 Q. I'm sorry?

2 A. Yes.

3 Q. And what your testimony was is that you said that because
4 you were concerned that the buyer of the car in New Orleans was
5 going to think the car was broken, right?

6 A. Yes, sir.

7 Q. And you didn't want to be held responsible, right?

8 A. Yes, sir.

9 Q. Now, you hadn't given the mechanic, the owner of the car,
10 any cash before you left, right?

11 A. No.

12 Q. You didn't buy the car, you weren't going to resell the
13 car, right?

14 A. No.

15 Q. You were just transporting the car, right?

16 A. Yes, sir.

17 Q. You were going to get paid?

18 A. No.

19 Q. You were doing this out of the goodness of your heart?

20 A. Yes, sir.

21 Q. A favor for your brother?

22 A. Yes.

23 Q. A favor for the mechanic, the guy you never met?

24 A. I don't know the guy.

25 Q. Just a favor for your brother, right? Drive how many

1 thousand miles from New Jersey to Louisiana?

2 A. Not thousand miles. It's 1200 miles.

3 Q. Took you two days, right?

4 A. Yes.

5 Q. That was the favor?

6 A. Well, the favor that he was helping me to get home, and I
7 had to purchase an expensive ticket. I figured that's an easy
8 way to get home.

9 Q. I want to ask about one more thing on this transcript.
10 Could you please turn to page 6. You say here the only
11 reason -- and this carries over from the bottom of the last
12 page: The only reason I was saying it, meaning --

13 THE COURT: Where are you reading from?

14 MR. COOPER: I'm sorry, your Honor. It's actually the
15 bottom of page 5.

16 Q. Right after you say, The problem is where it's going, those
17 people check everything, and your testimony is that you were
18 talking about the buyer of the car, right?

19 A. Yes.

20 Q. You were concerned he was going to discover the fact that
21 the seats didn't go all the way down, right?

22 A. It was broken, yeah.

23 Q. It was broken is your testimony, right?

24 A. Yes.

25 Q. Because of that, you would somehow be on the hook for

1 something, right?

2 A. Yes.

3 Q. You would be in trouble if you delivered a car that had a
4 broken seat back, right?

5 A. Yes.

6 Q. And you go on from there to say, the only reason I was
7 saying it was because, you know, I didn't feel safe, right?

8 A. Exactly what you said. I didn't want to deliver a car and
9 the guy said this was broken, it wasn't part of whatever the
10 deal was. My car was to deliver the car. If it was damaged, I
11 don't want to be held responsible.

12 Q. Sir, is it your testimony that you thought the buyer of the
13 car down in New Orleans was going to attack you if he
14 discovered that the seat didn't go down?

15 A. No.

16 Q. That you would somehow be in danger?

17 A. No.

18 Q. That he was a violent guy?

19 A. I didn't know the guy.

20 Q. That he had friends who would hurt you somehow?

21 A. I don't know.

22 Q. That's not what you were saying. You weren't thinking that
23 when you went down to New Orleans, right?

24 A. No.

25 Q. You weren't thinking that when you made this call, right?

1 A. No.

2 Q. You just said that you didn't feel safe with the car,
3 right?

4 A. In the situation being stuck with a vehicle that say that I
5 broke it without me doing anything to it.

6 Q. That's something that made you feel not safe, right?

7 A. Yes.

8 MR. COOPER: One moment, please, your Honor.

9 THE COURT: Yes.

10 Q. I do want to ask a few questions about Government Exhibit
11 206T.

12 MR. COOPER: May I approach, your Honor.

13 THE COURT: Yes.

14 Q. So you don't have to flip, Mr. Gomez, there it is.

15 Let's talk about this call for a moment.

16 A. OK.

17 Q. This is a call from the next day, December 5, 2014, right?

18 A. Yes.

19 Q. And it's a call between your phone and the phone of the
20 confidential source, right?

21 A. Yes.

22 Q. Your testimony on direct examination is that you thought
23 that Ms. Ramon-Baez, who was sitting next to you, had dialed
24 the buyer of the car in New Orleans, right?

25 A. Yes. That's what I asked her, if she could call the guy.

1 Q. You weren't expecting the buyer to give you anything, were
2 you?

3 A. No.

4 Q. He wasn't going to give the cash to you, right?

5 A. No.

6 Q. He wasn't going to give you a car, right?

7 A. No.

8 Q. In fact, you were giving him a car, right?

9 A. Yes.

10 Q. You weren't going to get anything else from him, right?

11 A. No.

12 Q. Your job was to just drop off a car and get out of there,
13 right?

14 A. Yes.

15 Q. You were trying to get back to Texas?

16 A. Yes.

17 Q. Now, Texas is right next to Louisiana, right?

18 A. Yes.

19 Q. It's a pretty short flight from New Orleans to Converse,
20 Texas, where you lived?

21 A. Yes.

22 Q. Much closer to get from New Orleans to Converse than to get
23 from Paterson, New Jersey down to Converse, right?

24 A. Yes.

25 Q. With all that in mind, you spoke on the phone with the guy

1 you are saying you thought you were just going to drop off a
2 car to, right?

3 A. Yes.

4 Q. And so let's look at the call. Let's look at page 2, four
5 paragraphs up from the bottom. This is what says here CS.

6 This is the guy you are saying you thought was the buyer of the
7 car, right?

8 A. Yes.

9 Q. You were going to drop the car off to him and then get out
10 of there?

11 A. Yes.

12 Q. And he says: As soon as you are around, let me know so
13 that I send for it and I'll see if I can have the other one
14 ready so I can bring it down for you right away, right?

15 A. Yes.

16 Q. You see that?

17 A. Yes.

18 Q. That was the guy you thought you were going to drop off the
19 car to, right?

20 A. Yes.

21 Q. Let's look at the next page. I'm sorry. I think this can
22 be answered with a yes or no. You don't say, hold on, what are
23 you talking about, right?

24 A. Can I answer.

25 THE COURT: No. It's a yes or no question.

1 Q. What do you say next? Do you say, hold on, I have no idea
2 what you are talking about?

3 A. No.

4 Q. You say, all right then, right?

5 A. Yes.

6 Q. And then on the next page, sir, if you can turn to page
7 3 -- actually, talking about this call, did you happen to
8 notice that the guy that you were talking to had the same exact
9 voice as the guy you spoke to the day before?

10 A. No.

11 Q. The day before you had that long phone call we talked
12 about, Government Exhibit 205T, right?

13 A. Yes.

14 Q. You talked about the car?

15 A. Yes.

16 Q. You asked him questions?

17 A. Yes.

18 Q. He was talking to you about how the car has no problems,
19 right?

20 A. Yes.

21 Q. He has driven it all over, no problem at all?

22 A. Yes.

23 Q. And then right here, Government Exhibit 206T, you were
24 talking to the same guy you now know, right?

25 A. No.

1 Q. You don't now know that you were talking to the same guy?

2 A. Now? Now, I knew. Before I didn't know. I couldn't tell
3 it was him.

4 Q. Your testimony is at the time you didn't draw the link
5 between the two, right?

6 A. No.

7 Q. Let's look at page 3 then of Government Exhibit 206T. This
8 is the very top, sir. This is what the other guy said. This
9 is the guy you are saying you thought was the buyer?

10 A. Yes.

11 Q. Not going to give you anything, right?

12 A. Yes.

13 Q. No cash?

14 A. Yes.

15 Q. Your testimony is you certainly were not going to get any
16 drugs from this guy?

17 A. Yes.

18 Q. Not at all?

19 A. No.

20 Q. You were just going to give him something?

21 A. The truck.

22 Q. He wasn't going to give you a car?

23 A. No.

24 Q. You were going to give him a car, right?

25 A. Yes.

1 Q. Let's look at what he says at the top, sir. He says:

2 Speak with the man because he said that he was going to have
3 one there so that I could bring it to do it -- one, the 250
4 diesel, right? You see that?

5 A. Yes.

6 Q. Now, you know that a 250 diesel is a kind of car, right?

7 A. That's not a car.

8 Q. Not a car?

9 A. A 250 diesel. That's not a car.

10 Q. The man you were talking to here was saying that he is
11 going to bring it to you, right?

12 A. Yes. That's what he's saying.

13 Q. And, again, when he said that, your answer wasn't, what are
14 you talking about, right?

15 A. Yes. Can I explain?

16 Q. Let me ask you a question here. 250 diesel is not a car,
17 right?

18 A. Yes.

19 Q. It's an engine?

20 A. Yes.

21 Q. It's a particular kind of engine?

22 A. Yes.

23 Q. You knew that at the time, right?

24 A. Yes.

25 Q. Were you expecting the buyer of the car to bring you a new

1 engine to swap into the car you were dropping off for him?

2 A. No.

3 Q. No, you weren't, right.

4 Were you expecting him to give you an engine in a box
5 that you would carry back up to New Jersey with you?

6 A. No.

7 Q. Now, when he says this, this thing about bringing you the
8 250 diesel, do you say, what are you talking about?

9 A. No.

10 Q. Do you say, that's not the deal?

11 A. No. I didn't say anything.

12 Q. Do you say, I talked to Jorge, I talked to the mechanic, I
13 am not carrying a 250 diesel back to New Jersey with me?

14 A. I didn't say anything.

15 Q. You do say something, sir. You say, right. You see that?

16 A. Can I just explain?

17 Q. Do you see that, sir?

18 A. Yes.

19 Q. Two paragraphs below that, not that you say nothing, it's
20 not that you say, what are you talking about; you say, OK, all
21 right. You see that?

22 A. Yes.

23 MR. COOPER: One moment, please, your Honor.

24 No further questions.

25 THE COURT: Redirect.

1 MS. TODD: No, your Honor.

2 THE COURT: Mr. Gomez, you can stand down.

3 (Witness excused)

4 THE COURT: Ms. Todd, other evidence.

5 MS. TODD: Defense rests, your Honor.

6 THE COURT: I'll hear the lawyers at side bar.

7 (Continued on next page)

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1 (At the side bar)

2 THE COURT: Do you have a motion?

3 MS. TODD: I renew my Rule 29 motion based on the
4 evidence so far.

5 THE COURT: I will reserve decision.

6 Have the lawyers had an opportunity to review the
7 charge?

8 MS. TODD: I have, your Honor.

9 MR. EGAN: Yes, your Honor.

10 THE COURT: Can you give me a sense of how many
11 comments you are going to have?

12 MS. TODD: I have one comment.

13 MR. EGAN: I maybe have one from the government.

14 THE COURT: Would it make sense for me to tell the
15 jury we are going to take say a 15-minute recess?

16 MR. EGAN: Mr. Cooper is doing summation. There may
17 be some stuff out of the cross that he wants to incorporate, if
18 we could have a little bit --

19 THE COURT: That would be quite shocking. Maybe a
20 little bit longer than that. Should I ask them to come back in
21 half an hour?

22 MS. TODD: Yes, your Honor.

23 MR. COOPER: Yes, your Honor. I told the Court
24 yesterday, I expected the summation to be half an hour. I
25 think based on last night and now, probably more like 45

1 minutes or maybe a bit more than that, just so the Court can
2 plan.

3 THE COURT: I think we are doing well in terms of
4 time. Counsel on both sides should feel free to take as long
5 as they need to do their summations. I'm happy with the pace
6 of the trial and it's clear to me that I'll be able to get the
7 closings in and the charge and also have the jury able to
8 deliberate some time today. I'm pleased with how things are
9 going.

10 I'll tell the jury.

11 MS. TODD: Do we get a prize, your Honor?

12 THE COURT: We will talk about that later.

13 I'll tell the jury to come back in half an hour and
14 when they return they will hear the closing arguments and we
15 will go into the jury instructions. Then the case will be
16 given to them for their deliberation and determination.

17 MR. COOPER: Thank you.

18 (Continued on next page)

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1 (In open court)

2 THE COURT: Ladies and gentlemen, that concludes the
3 evidence in the case, so let me tell you what our schedule is
4 going to be.

5 I need to meet with the lawyers to review the jury
6 instructions I am going to be giving you later today. I am
7 going to ask you to come back in half an hour. When you come
8 back in half an hour we will hear the closing arguments from
9 the lawyers and then we will go right into the jury
10 instructions. And after I deliver the jury instructions the
11 case will be given to you for your deliberation and decision on
12 the charge against Mr. Gomez.

13 As always, don't discuss the case, keep an open mind,
14 because you have not heard the closing arguments yet.

15 The time now is about 10:30. Please come back at 11
16 a.m. We will hear the closing arguments, you'll hear the jury
17 instructions, and the case will be given to you. Thank you all
18 very much.

19 (Jury not present)

20 THE COURT: I had sent around a revised charge last
21 night because the charge I had originally sent had included an
22 instruction for when the defendant has chosen not to testify.
23 Obviously, I had to take that charge out and I made that
24 change.

25 I also added language to the general charge about

1 witness credibility. This is on page 10 at the bottom. I
2 added the sentence: You should judge the defendant's testimony
3 in the same way that you judge the testimony of any other
4 witness.

5 Having made those changes, and also I had a bracketed
6 instruction on limiting the instructions that I had given. I
7 couldn't recall any limiting instructions I actually gave. I
8 took that bracketed material out.

9 Those are the changes I remember making from the
10 earlier draft and now I'm happy to hear other comments that the
11 lawyers have on the proposed charge. I don't know what page
12 comes first, but just let me know.

13 MS. TODD: Your Honor, on page 13, the third
14 paragraph, where the sentence begins: The government must take
15 its witnesses as it finds them. Not a problem with that. And
16 frequently must use such testimony in criminal prosecutions
17 because otherwise it would be difficult or impossible to detect
18 and prosecute wrongdoers.

19 Your Honor, I would object to that portion of the
20 sentence where it begins, it frequently and with wrongdoers. I
21 think the government has -- it's their option to use them.
22 They choose to use these witnesses. They could have proceeded
23 otherwise.

24 I think it's prejudicial to say that it would be
25 difficult or impossible to detect and prosecute wrongdoers. I

1 think it's prejudicial to my client. It serves to neutralize
2 any potential motive or bias that may occur, and I think it's
3 the government's option. They choose to do that.

4 THE COURT: Mr. Egan, what do you say?

5 MR. EGAN: Your Honor, one, I think this statement is
6 factually accurate, that it would be difficult or impossible,
7 and I also think it's a fairly standard piece of the charge on
8 cooperator testimony, that it is fair to -- obviously, the
9 thrust of the charge there is about caution that they should
10 use in evaluating any potential bias that a cooperator may
11 have, but that it is also important that they realize that this
12 is permissible and why. I think that sentence is appropriate.

13 THE COURT: The purpose of the language, and this is
14 standard language that I use in every case involving a
15 cooperator, and the purpose of the language is to tell the jury
16 that because of the nature of, as in this case, criminal
17 conspiracy, which, as I say at a later point in the charge is
18 generally by its nature secret, it frequently would be
19 difficult for the government to prosecute such behavior without
20 the willingness of someone who actually participated in the
21 conspiracy to testify.

22 Now, I think this is important to communicate to the
23 jury because someone who is not familiar with the criminal
24 justice system and who is brought in to serve on a jury for the
25 first time such as this, and we have a number of first-time

1 jurors in this particular jury, might find it odd or jarring
2 that the government has decided to use as witnesses people who
3 have engaged in criminal behavior themselves.

4 And here we had two such people, two such people who
5 admitted that they participated in criminal activity but who
6 nonetheless were called by the government, and those people
7 were Antonio Jimenez-Baez and Caronlay Ramon-Baez, both of whom
8 gave critical testimony, both of whom admitted that they
9 themselves engaged in extremely serious crimes.

10 Mr. Jimenez-Baez told us that he had been involved in
11 the distribution of I think he said hundreds of kilos of
12 narcotics. Ms. Ramon-Baez said that she pleaded guilty to
13 participating in a conspiracy that involved five kilograms and
14 more of cocaine and to firearms charges related to those drugs
15 and faced a 15-year minimum mandatory sentence. These were
16 witnesses who admitted that they engaged in pretty serious
17 criminal activity and, again, for people who are not familiar
18 with the criminal justice system, it might raise very serious
19 questions as to why the government would use such people as
20 their witnesses in this case, and it is for that reason that
21 this language is in here.

22 The purpose of the language is, first of all, to
23 communicate that for those who are not familiar with the
24 criminal justice system, it's not unusual for the government to
25 rely on such witnesses. That's the first point.

1 The second point goes to why would the government use
2 such witnesses in the first place. And so the second sentence
3 of the third paragraph on page 13 tells the jury that the
4 reason why the government decides to use such witnesses is that
5 often it would be difficult to prove a case without the
6 cooperation of someone who had actually engaged in the
7 conspiracy. The language is standard. It addresses an issue
8 that might be of concern for people who are not familiar with
9 the criminal justice system.

10 And the instruction, considered as a whole, is
11 balanced, which is something that, of course, I strive for in
12 every instruction. I say balanced here because the next
13 paragraph talks about the need to scrutinize the testimony of
14 cooperating witnesses with special care and caution for the
15 reason that they have admitted participating in criminal
16 conduct and that raises a question as to their credibility.

17 I'm going to keep the language as it is. Any
18 objection to it is overruled.

19 What's next?

20 MS. TODD: That's it for me, your Honor.

21 THE COURT: Mr. Egan, you told me you had something.

22 MR. EGAN: I had one. I had gone back and forth on
23 the cooperating witness because it describes them both having
24 entered into cooperation agreements --

25 MS. TODD: I'm sorry. What page are you on?

1 MR. EGAN: 12 now. Having both entered into
2 cooperation agreements which of course they both did,
3 obviously, and that they did so in hopes of receiving a lesser
4 sentence.

5 Obviously, as Mr. Jimenez-Baez sits here now, he has
6 been sentenced. But after reviewing it, I think it is the most
7 accurate description of where they were at the time they were
8 engaging in this. So I think there is no need, unless people
9 disagree, to further clarify that because I think when he
10 engaged in this operation he was doing so with that motive.

11 THE COURT: I thought about this because, obviously,
12 he has been sentenced, but he was also quite clear that at the
13 time he participated in these discussions he had not been
14 sentenced and that the testimony came through quite clearly
15 that what he did in this case in terms of talking with Jorge
16 Gomez and then talking with both Jorge Gomez and the defendant,
17 that that was all part of his cooperation at the time, prior to
18 sentencing, and it was for that reason that I used the language
19 that I did.

20 MR. EGAN: Like I said, I had gone back and forth.
21 For the same reason, unless people think there is a need, I
22 think it does accurately capture sort of the motives there.

23 The other one was on page 27 and it's very small, in
24 the venue section. It says: Within the Southern District of
25 New York, the Southern District of New York --

1 MS. TODD: I agree, yes.

2 MR. EGAN: -- includes Manhattan and the Bronx. There
3 is also testimony about the cooperator being in Yonkers. I
4 know sometimes people list all the counties. I would be fine
5 if you said Manhattan, Bronx, Yonkers or if you want to say
6 Westchester County. Just something to let them know that that
7 part, Yonkers, is relevant to venue as well.

8 THE COURT: That sentence which is on page 27 will
9 read: Southern District of New York includes the Bronx,
10 Manhattan, and Yonkers in Westchester County.

11 MR. EGAN: That's fine.

12 THE COURT: Anything else, Mr. Egan.

13 MR. EGAN: Not from the government.

14 THE COURT: Ms. Todd, anything else.

15 MS. TODD: No, your Honor. I'm actually in agreement.
16 I noted that.

17 THE COURT: I should tell you that the version of the
18 charge the jury will get will not have any of the case
19 annotations. I suspect you know that. I just wanted to tell
20 you that.

21 The reason why I give the annotations is so that in
22 the event there is any challenge to the charge on appeal, the
23 circuit will have available to it the case law that I relied
24 on. So it is my practice to give the attorneys a version of
25 charge that contains the annotations, to docket that, but then,

1 obviously, to give the jury a version of the charge that does
2 not contain the annotations. We will resume at 11.

3 MR. EGAN: One last thing. I just wanted to let the
4 Court know in terms of exhibits going back, we had agreed with
5 Ms. Todd the dash cam video. There is a portion of it where
6 they ask him about a prior conviction and we had agreed to
7 redact that.

8 We are running into technical difficulties with
9 redactions. I assume the Court's practice is, if they come out
10 and want to see that portion, we will continue to try to redact
11 it. If we are not able to do it, we just want to make sure if
12 they ask to see that, that they do it in the courtroom so we
13 can drop the volume out of that so the jury does not hear that
14 portion.

15 THE COURT: You don't have any objection to that,
16 Ms. Todd?

17 MS. TODD: No, your Honor. We are in agreement.

18 THE COURT: I had forgotten about the video. I will
19 add that. I will tell them that all of the exhibits will be
20 sent to the jury room except for the dash cam video and the
21 drug evidence. If they want to see the video or the drug
22 evidence, it will be shown to them in the courtroom. I will
23 make that change.

24 If there is nothing else, we will resume at 11.

25 (Recess)

(In open court; jury present)

THE COURT: Please be seated.

Ladies and gentlemen, we're now going to hear the summation on behalf of the government. The procedure here is the government has an opening summation and then the defense has an opportunity to give its summation, and then the government has the opportunity to give a brief rebuttal. The order is determined by who has the burden of proof, and as you have heard me say many times already, and you'll hear me say again when I give you the final instructions on the law, the government, of course, has the burden of proving the charge against Mr. Gomez beyond a reasonable doubt.

Mr. Cooper.

MR. COOPER: Thank you, your Honor.

Sandy Gomez was nervous. He was pulled over on the side of the road in Slidell, Louisiana, and there were police lights flashing in the rear view mirror. When Trooper Whittaker started asking questions, he tried to answer as he had rehearsed with Caronlay Ramon-Baez back in New Orleans, and he was nervous. Now, as you have seen and heard the evidence over these last few days, you know precisely why Sandy Gomez was nervous. He was nervous because he was in the middle of a very large cocaine deal. He was bringing the first part of that deal, about five kilos, from New Orleans back to New Jersey. And he had a promise, if he succeeded, in dozens and

1 dozens of kilos more. But he didn't succeed. He was caught
2 redhanded in that car.

3 Now, Mr. Egan began this trial by describing the story
4 of that car, and now at the close of the case you understand
5 why, because that car, the story of how it got to Paterson, of
6 how Sandy Gomez drove that car down to New Orleans and tried to
7 come back, that tells you everything you need to know about
8 this case and everything you need to know about why the
9 defendant is guilty.

10 Ladies and gentlemen, the evidence is in. This is our
11 opportunity to review that evidence and discuss how it all fits
12 together and leads to one, and only one, conclusion: that
13 defendant Sandy Gomez is guilty.

14 Here's what I'd like to do in this closing statement.
15 First I want to say just a few words about the law that I
16 expect the judge will instruct you about, and second, the most
17 important, or just as important, I should say, I'd like to
18 review the evidence in the case and discuss how the evidence --
19 the testimony on the stand, the documents, the recordings that
20 you've heard -- how they all fit together, how they prove the
21 defendant's guilt. Now, there's really not a lot in dispute in
22 this case. As I said, the judge will instruct you on the law,
23 and what the judge says controls, but I expect the judge will
24 tell you that there are two things, or elements, that the
25 government needs to prove for the crime charged in the

1 indictment. I just want to spend a few minutes now to talk
2 about that.

3 The defendant is charged with conspiracy to distribute
4 and possess with the intent to distribute cocaine. I expect
5 you'll hear that there are two elements to this offense:

6 First, that the conspiracy existed; and second, that
7 the defendant knowingly became a member of the conspiracy. On
8 the first element, there's really not a lot of dispute.
9 There's really no dispute at all that there was in fact a
10 conspiracy here. Let's for a moment set the defendant, Sandy
11 Gomez, aside. You know there was a conspiracy here. Jorge
12 Gomez, Caronlay Ramon-Baez, the Louisiana cocaine supplier, the
13 customers in New York and New Jersey, even Yovanny Perez, the
14 guy Jorge reached out to get the car with the trap. They were
15 all working together. They were all agreeing together to get
16 cocaine from New Orleans up to New Jersey and beyond and sell
17 it. Even before you get to the defendant, you know there was a
18 conspiracy, which really is an agreement by two or more people
19 to accomplish a criminal purpose. So element 1, you can set
20 that aside, there's really no dispute here.

21 I also expect that the judge will instruct you you're
22 going to have to make a determination about the amount of
23 cocaine that was involved here, and here also there really is
24 no dispute. I expect the judge will instruct you that you do
25 not need to agree on the precise quantity, but you do need to

1 agree that the weight was at least five kilograms, so let's
2 talk for just a moment about all of the weights or some of the
3 weights that you know that this conspiracy involved that amount
4 of drugs.

5 First, let's talk about the capacity of that trap.
6 You know it was 25 to 30 kilograms. The testimony of Antonio
7 Jimenez-Baez, the confidential source posing as the trap maker:
8 between 25 and 30 kilos. We also know that from the
9 transcripts, from the recordings that Mr. Jimenez-Baez made
10 with this defendant and with Jorge Gomez. Government Exhibit
11 202T, what does Mr. Jimenez-Baez say? "What I'm bringing you
12 holds 25 to 30 miles per gallon. It has that space per
13 gallon." He's talking about that size of the trap. Ladies and
14 gentlemen, why get a car with a trap that big unless you need
15 it?

16 How else do you know this involved more than five
17 kilograms? Mr. Jimenez-Baez's conversations with Jorge Gomez.
18 Again, let's go to the transcripts, 203T. These are stipulated
19 to, ladies and gentlemen. Everyone agrees, both sides agree
20 that these are accurate and the people who were talking said
21 what they say. So what did they say? 203T, this is that
22 meeting in Paterson, New Jersey, between the confidential
23 source, Mr. Baez, and Jorge Gomez. You see. What's Jorge
24 looking for? He's looking for one to hold 50, 50 kilos. What
25 else do they say? "50 pesos." Now, you know he's not talking

1 about 50 Mexican bills. He's talking about 50 kilos there.

2 What else does he say? Again, 50 pesos, and here he
3 says, "25 for me and 25 for another person." That's what
4 they're looking for; that's what they're expecting. Again,
5 another way you know that it was more than five kilos, because
6 this defendant, Sandy Gomez, and his brother were trying to get
7 more cars, more traps, bigger traps. Why? To move more drugs.

8 203T again. What do they say? Jorge Gomez and
9 Mr. Jimenez-Baez are talking about more cars. "I wish you had
10 a couple of cars doing little things to them." At the bottom,
11 what does the confidential source say? "I'll bring you another
12 one and that one holds 40." More cars, more traps.

13 Talking about a different car here, same exhibit,
14 203T, "That one holds 38 to 40." They're talking about a
15 Highlander to hold 28. 40 kilos, a Toyota 100. More cars,
16 more traps. And the defendant, Sandy Gomez, gets in on the
17 game too when he talks about more cars, more traps.

18 Government Exhibit 206T, this is the phone call that
19 the defendant made when he was on the way down to New Orleans
20 with Caronlay Ramon-Baez by his side. What does he say? These
21 are the defendant's own words. The confidential source says,
22 "I'll see if I can have the other one ready so I can bring it
23 down for you right away." What does he say? He doesn't say,
24 What are you talking about? He doesn't say, I don't
25 understand. He says, "All right then. OK. Do what you can."

1 Again, "the 250 Diesel." We'll come back to this and
2 talk about the defendant's testimony on the stand. That was a
3 pretty vivid moment. But here you have it, "the 250 diesel."
4 Another engine, another car, another trap.

5 How do you know that this involved cocaine? Well,
6 ladies and gentlemen, you saw the evidence, Government Exhibits
7 403D and 403C. This is almost five kilos of cocaine that was
8 recovered from the car that the defendant was driving in
9 Louisiana. And there's a stipulation on this. The stipulation
10 is Government Exhibit 1004. It was cocaine and it weighed just
11 under five kilos. So let's put that aside.

12 The only question left, the only thing really at issue
13 in this case is whether the defendant knowingly joined the
14 conspiracy. And here too, on that question, even though the
15 defense is disputing that, there is overwhelming evidence that
16 he joined this conspiracy. There are many reasons. I'm just
17 going to focus on three in this closing statement:

18 First, the testimony of Caronlay Ramon-Baez. She gave
19 you an insider's view on this conspiracy. She was by the
20 defendant's side step by step, from New Jersey down to New
21 Orleans, back to New Jersey, back to New Orleans, until they
22 were stopped and arrested in Slidell. Her testimony, ladies
23 and gentlemen, is absolutely devastating for the defendant.
24 But even setting her testimony aside, the story of the
25 defendant's travels, starting when he came up to New Jersey in

1 November 2014, it's been proven at this trial and it shows the
2 defendant's guilt. But even setting that aside, perhaps most
3 important and most problematic are the defendant's own words.
4 His words are those transcripts when he calls the CS, the
5 confidential source, and his words on the stand yesterday
6 afternoon and this morning. You could convict the defendant
7 based just on that.

8 I want to talk about each one of these in turn and
9 review some of the evidence. First there's Ramon-Baez. As I
10 said, she had a front row seat and she gave you a front row
11 seat and took you inside the workings of this conspiracy.
12 Let's talk about what she said. First the defendant came up
13 from Texas in November 2014 and he wanted Jorge to give him
14 work here. What was work? Work was working at that heroin
15 table, but you will learn that Jorge said, and this is the
16 transcript at 205, you'll learn that Jorge said no. He didn't
17 want to work with family members. I'm sorry. This is
18 transcript at page 204. So here, this is what I was just
19 talking about. Sandy Gomez wanted work. He wanted to get to
20 that table. Jorge said, "I don't work with family." But
21 Ms. Ramon-Baez told us how it was this defendant who came to
22 the table and approached workers there to find somebody who
23 could go with him to New Orleans, and he was willing to pay.
24 You learned from Ms. Ramon-Baez, "Sandy said he had
25 the acquaintance in New Orleans to give him 50 to a hundred

1 kilos to bring back to Paterson." What was he going to do once
2 that cocaine got back? He was going to give it to people in
3 New York.

4 Now, Ms. Ramon-Baez told you a bit about that first
5 trip down to New Orleans at the end of November. She and the
6 defendant flew from Newark, and we saw the text messages she
7 traded with Jorge. This was Government Exhibit 402T. You
8 remember Ms. Ramon-Baez was updating Jorge about where they
9 were and what they were doing. And when they got to New
10 Orleans, you heard about the defendant's attempts to get the
11 cocaine from the supplier. Let's look at that. This is
12 transcript at page 210. What did this defendant say to the
13 supplier? He said, "Hey, it's Pedro." He made up a fake name,
14 but there was a miscommunication. The defendant and the
15 supplier got crossed up. Each thought the other was going to
16 provide the car with a trap, so the trip was a no-go.

17 The defendant had to find a car. So what did he do?
18 Again, we heard from Ms. Ramon-Baez exactly what he did. He
19 got back to Paterson, he talked to Jorge, and Jorge said, I can
20 arrange for a trap. Jorge was going to call his friend Yovanny
21 Perez, and the defendant and Jorge came to a financial
22 arrangement. This is transcript page 212. Jorge was going to
23 front the money and the defendant was going to pay Jorge back
24 after he brought the drugs to Paterson. And we know that the
25 defendant tested the trap car. We know that from

1 Ms. Ramon-Baez. We know it from other witness that we'll talk
2 about in a minute. But looking at what Ms. Ramon-Baez said, on
3 December 14, 2014, what happened? The three of them -- Sandy,
4 Jorge, and Ms. Ramon-Baez -- got together at Jorge's apartment,
5 and Jorge showed Sandy how the trap worked. And even
6 Ms. Ramon-Baez knew that the defendant had a problem with the
7 trap. She told you about that. Everybody knew that the
8 defendant, Sandy Gomez, had a problem with the trap. It was
9 because of an issue in the back seat. The back seat was loose;
10 the trap was visible. And he was concerned that if they got
11 stopped by the police, the police would be able to see there
12 was a hidden compartment in the car, but he took the car
13 anyway.

14 Now with the car he drove back to New Orleans with
15 Ms. Ramon-Baez by his side. She told you how they drove all
16 night on December 4. They spent the next day at a hotel and
17 then drove all night again on December 5. You saw the message
18 that Ms. Ramon-Baez sent to Jorge letting him know all about
19 that last leg of the trip.

20 Government Exhibit 402T, these are the text messages
21 that Ms. Ramon-Baez exchanged with Jorge Gomez to update him.
22 What did she say on December 5? This is when they were stopped
23 at the hotel in Virginia before they were going to drive all
24 night. She says, in a text, "He wants to go 5:00 because the
25 license plate is from New Jersey." Remember Ms. Ramon-Baez's

1 testimony on this very point. Why did he care? "Because if
2 the police saw us, the fact that we had New Jersey plates, that
3 was going to be a problem." You know exactly why he was
4 concerned, because he knew that the car had a trap and he knew
5 he had a mission.

6 So what did the defendant do? You heard that from
7 Ms. Ramon-Baez also. When they got down to New Orleans, he
8 covered up, he wanted a cover for the part of the license plate
9 that said New Jersey, and he used the name Pedro again when he
10 called the supplier in New Orleans. The defendant left
11 Ms. Ramon-Baez in the hotel and went out for a few hours, and
12 when he came back, he had the cocaine. Now, Ms. Ramon-Baez had
13 a very vivid recollection of this. You may recall that
14 testimony. The defendant came back, and this is the
15 transcript, pages 229 and 230: "He came back to the hotel
16 room, took out the cocaine, and put it on the bed in the hotel
17 room," and she saw that they were packaged differently. One
18 had a purple glove around it; the others had different kinds of
19 wrapping, and there were five individually wrapped bricks.

20 What did they do then? Mr. Gomez drove to a dark
21 street to put the kilos in, to open up the trap and put the
22 kilos in. Of course he drove to a dark street. He's not going
23 to put the kilos in in a parking lot of a hotel with cars
24 coming and going and guests coming and going. That makes
25 sense. And then you also know that down in Louisiana, before

1 they started coming back up, the defendant coached
2 Ms. Ramon-Baez on what to do and what to say if they were
3 stopped by the police. He told her to tell the police that
4 they were having a sexual relationship and to say that they
5 came to watch the football game between New Orleans and
6 Carolina. And ladies and gentlemen, when they were stopped by
7 Trooper Whittaker, that's exactly the defendant's story,
8 exactly what he told the trooper, which you know not to be
9 true, and what she testified on the stand also was not true.
10 It was a lie.

11 Now, Ms. Ramon testified yesterday, I'm sure it's
12 fresh in your minds. Her testimony, you know, is absolutely
13 devastating for the defendant. And Ms. Todd knows that
14 Ms. Ramon-Baez's testimony is problematic for her client
15 because hearing that testimony you know the defendant is
16 guilty, and that's why Ms. Ramon-Baez was asked a number of
17 questions on cross-examination about her incentive to tell the
18 truth and what she said about this and what she said about
19 that. So let's talk about that because, ladies and gentlemen,
20 you should scrutinize Ms. Ramon-Baez's testimony carefully.
21 She pled guilty to serious crimes. You don't need to like her,
22 but you do need to consider her testimony and ask yourself
23 whether it makes sense. Ask yourself, What was her demeanor
24 like on the stand? Did she answer Ms. Todd's questions in the
25 same manner that she answered Ms. Crowley's? Yes, she did.

1 Did she seem like she was holding back, or did she talk about
2 her own drug-dealing past, Jorge's drug-dealing past, the
3 defendant's participation in this conspiracy, even the
4 participation of her family members? She laid it all out
5 there. She had nothing to hide. Also important, ask yourself,
6 Is her testimony corroborated? Is there other evidence that
7 her memory is correct and she was being truthful? What about
8 the documents? What about other witnesses's testimony? Let's
9 take a look because you will see that time and time and time
10 again, in ways big and small, her testimony from the stand is
11 corroborated by documents that are in evidence in this case and
12 other testimony.

13 So that first New Orleans trip, the flight that the
14 defendant and Ms. Ramon-Baez took at the end of November, she
15 told you how she and the defendant flew down to New Orleans
16 again in November to meet the source and get the drugs. She
17 told they flew from Newark to Houston and from Houston to
18 Louisiana. Well, we have the flight records, and you saw them.
19 Government Exhibit 53 that came in through Debbie Erickson, the
20 witness from the company that manages the travel systems.

21 What did they show? Sandy Gomez, Caronlay Ramon-Baez,
22 date of departure, November 26. Where did they fly? Newark to
23 Houston, Houston to New Orleans. Corroborates Ms. Ramon-Baez's
24 testimony.

25 What about that second New Orleans trip?

1 Ms. Ramon-Baez told you how she and the defendant flew down to
2 New Orleans at the end of November to meet the source and get
3 the drugs. I'm sorry. She told you how they drove. This is
4 the second New Orleans trip. She told you how they drove all
5 night and they slept during the day and they drove all night
6 again, and that's corroborated by what you heard from Task
7 Force Officer Garcia, the first witness who testified. He was
8 doing surveillance. They got trap alarms on December 4, and
9 then closer to 9 p.m. the vehicle started to move. You
10 remember, he and his partner, Detective Patti, jumped in the
11 car and chased after the white SUV. They drove all night to
12 get to Virginia, and then later on that evening they got back
13 in the vehicle and they started moving again, corroborating
14 Ms. Ramon-Baez's testimony.

15 So Ms. Ramon-Baez told you how when they were in New
16 Orleans, for the most part they stayed in the hotel, but the
17 defendant went out around town to meet the supplier and get the
18 cocaine. That's corroborated first by the testimony of Task
19 Force Officer Garcia, who said they did surveillance, the DEA
20 and local law enforcement, and they saw the defendant, Sandy
21 Gomez, go out alone from the hotel while Ms. Ramon-Baez stayed
22 there. But it's also corroborated by the text messages. This
23 is Government Exhibit 402T, again, Ms. Ramon-Baez's text
24 messages back and forth with Jorge Gomez, updating him about
25 what's going on. What does she say on December 7? "Man, I

1 don't believe with that work they haven't called." You know
2 she's not talking about any job other than cocaine. She can't
3 believe the supplier's not getting back to them. And then what
4 does she update Jorge Gomez? "He already left to see the
5 people." Right there, ladies and gentlemen. That is where
6 Sandy Gomez went out to get the cocaine.

7 Now, even minor details that Ms. Ramon-Baez recalls,
8 those are corroborated too. For example, she said that she and
9 Sandy got Popeye's because they were hungry. That's in the
10 transcript at page 231. What do we see in Defense Exhibit F?
11 It's a little small. I'll hold it up so you can see it, but
12 this is a picture of the car that was pulled over by Trooper
13 Whittaker, and if you look in the passenger's side of the seat,
14 it's a Popeye's box. Again, details big and small.

15 What else did she say? She said the seat was broken.
16 We all know that by now. So what did Sandy do?
17 Ms. Ramon-Baez, and this is again transcript at page 231, she
18 said that Sandy put pillows and bedcover on the top of the
19 trunk so the seat wouldn't move. Another defense exhibit,
20 Defense Exhibit G, I'll hold it up again. What do you see
21 there right behind the seats, the back seat? You see pillows
22 and a blanket propping up that back seat. Again, details big
23 and small, Ms. Ramon-Baez time and time and time again
24 corroborated by documents, corroborated by pictures and
25 corroborated by other witnesses' testimony.

1 Ladies and gentlemen, Ms. Ramon-Baez's testimony is
2 reliable because it is corroborated, time and time again.
3 You've also seen that she had every incentive on the stand to
4 tell the truth. She's facing very serious penalties, and you
5 heard her say that she's cooperating in the hopes of obtaining
6 leniency. You also heard her say she believes if she lies, the
7 benefits of her cooperation go away and she's still facing very
8 serious penalties, yet another reason to know that she was
9 truthful on the stand.

10 And by the way, we know exactly why the defendant is
11 so concerned about Ms. Ramon-Baez's testimony. It's not just
12 the concern that started here at the trial; it's a concern that
13 started months ago. We heard from Ms. Ramon-Baez, and this is
14 transcript at page 233, after a court proceeding, the two of
15 them got on the train together to go back from court to New
16 Jersey, and Sandy told her that whoever asked -- her lawyer,
17 the government, or whoever -- to say that Sandy asked Jorge to
18 borrow the SUV, the cocaine was already in the SUV, and they
19 should blame it all on Jorge. Why? Because he knew that if
20 Ms. Ramon-Baez took the stand and testified truthfully, it was
21 game over. You could convict the defendant based just on
22 Ms. Ramon-Baez's testimony, but ladies and gentlemen, there's
23 much, much more here. So let's talk about the second reason
24 you know the defendant is guilty, the story of his travels.

25 Now here, he flies down to New Orleans late November

1 2014 with the ex-girlfriend of his long-estranged brother. He
2 stays down there for two days and then he flies back. And all
3 this is on flights that were purchased either the same day or
4 just the day before. Those are the undisputed facts. OK.
5 Maybe he can craft some kind of explanation for what that's all
6 about. But then a week later, what does he do? He gets in the
7 car, given to him by his brother, with Ms. Ramon-Baez by his
8 side, and drives all the way back down to New Orleans. So
9 let's even set aside for a moment the transcripts. His voice,
10 his words, where he tells the confidential source: "Trap
11 doesn't look good; concerned about safety; those people down
12 there, they check everything."

13 Let's set that aside. We're going to come back to it.

14 But what does he do when he gets to New Orleans? Well, even
15 before he gets to New Orleans, what does he do? He drives all
16 night and sleeps all day. You know why he was driving only at
17 night. Once he gets down to New Orleans, what does he do? He
18 buys a cover for the license plate that covers up the New
19 Jersey, and now we know exactly why.

20 What happens down in New Orleans? He's seen going by
21 himself around New Orleans, making stops, meeting with another
22 person, while his long-estranged brother's ex-girlfriend stays
23 back in that hotel room. That's what we heard from Task Force
24 Officer Garcia. And then what happens? He gets back behind
25 the wheel and, with his companion in the passenger's seat,

1 starts back to New Jersey. And here, ladies and gentlemen,
2 he's stopped by Senior Trooper Ron Whittaker, so let's focus on
3 that for a minute.

4 You heard the testimony of Trooper Whittaker. He
5 talked about how he received information from the DEA that they
6 wanted him to stop that white Yukon Denali. So he did. Who
7 was driving the car? The defendant was driving the car. Who
8 was in the passenger's seat? Ms. Ramon-Baez. Let's talk about
9 the things the defendant said to Trooper Whittaker. You saw
10 that dashboard camera video. It was a little shaky, but we
11 could hear what was going on, and Trooper Whittaker testified
12 about what was going on. What happened? The defendant lied.
13 Again and again he lied. He lied that Ms. Ramon-Baez was his
14 girlfriend. He lied that he had come from North Carolina. He
15 lied that he had been to a game, and then he forgot the score
16 to the game. He literally could not get his story straight.
17 And ask yourself why. Why lie? Why tell lie upon lie upon
18 lie? You know why. The evidence and your common sense tell
19 you exactly why he lied. He was protecting the precious cargo
20 hidden in the trap in the back seat.

21 Ladies and gentlemen, think of all the people who knew
22 that there was a trap in the car and there were drugs in the
23 trap. Jorge knew. Ms. Ramon-Baez knew. Even the confidential
24 source back in New Jersey and New York knew the car was going
25 to come down and come back up with drugs. But the man behind

1 the wheel of that car is the one person in this whole room who
2 didn't know? That defies logic, that defies the evidence, and
3 that defies your common sense. You could convict the defendant
4 based just on those facts. But if that weren't enough, ladies
5 and gentlemen, the most devastating evidence in this case --
6 the most devastating evidence -- are his own words, the
7 defendant's own words on those transcripts and the defendant's
8 own words on the stand. You could convict the defendant based
9 just on his own words. We'll talk about the transcripts now,
10 but first I want to address the man who wore the recording
11 device, Mr. Jimenez-Baez. He was the second witness.

12 Now, I must remind you that the defense bears no
13 burden in this case. The burden remains on the government, and
14 we embrace that burden. But when the defense questions
15 witnesses and offers evidence in its case, you should
16 scrutinize all of that very carefully, and we're entitled to
17 comment on it. So let's talk about that.

18 Ms. Todd spent most of her cross-examination of
19 Mr. Jimenez-Baez attacking him and suggesting that he was this
20 large-scale drug trafficker who might have been lying on the
21 stand in the hopes of obtaining a reduced sentence. Well,
22 guess what, ladies and gentlemen. It's not true. You heard
23 him say he got that 5K letter and he was sentenced a year
24 before he took the stand in this case. But the fundamental
25 point here, and you know this at this point, is that

1 Mr. Jimenez-Baez was nothing more than a walking recording
2 machine. He made recordings. From those recordings
3 transcripts were made. They were stipulated to by the
4 defendant. They are accurate, that's what he said, that's what
5 Mr. Jimenez-Baez bias said. No amount of attack on
6 Mr. Jimenez-Baez can change the defendant's words on those
7 transcripts.

8 The first transcript that the defendant's is on,
9 that's Government Exhibit 205T, December 4, 2014, in the
10 afternoon. Who is on the call? It's the confidential source,
11 it's this defendant, and it's Jorge Gomez. After you've heard
12 all the evidence in this case, at this point you know exactly
13 what they're talking about: The call that the trap in this car
14 is not very good. We've had plenty of testimony about that,
15 Mr. Jimenez-Baez, Trooper Whittaker, Ms. Ramon-Baez. Everybody
16 agrees it's a bad trap. You can open up the back door, you see
17 the molding is mismatched, you see wires, you see a gap in the
18 seat. The trap is no good. And we saw a picture of the back
19 seat of that Denali, and we had testimony. You can see there's
20 a wire. This is Government Exhibit 103 on the screen. There's
21 a wire exposed on the right-hand side, and what Trooper
22 Whittaker said: If you look at the bottom, underneath that
23 cushion, that's supposed to be empty. You're supposed to be
24 able to see all the way through, but you can't. There's
25 molding there and the molding doesn't match the rest of the

1 car. The point is, ladies and gentlemen, the trap is not very
2 good; it can be seen.

3 So what do they talk about in this call? What does
4 Mr. Gomez say? "Well, look, we were checking out the car. I
5 was explaining to him that I used to have a car just like that
6 one."

7 Now, I'm unclear after cross-examination whether he
8 actually had a Yukon Denali, whether it was a Tahoe, the Tahoe
9 was stolen, but the point is, ladies and gentlemen, what were
10 they doing, what were they checking out the car? Was it
11 looking at the oil and the gas, as Mr. Gomez would have you
12 believe, or was it taking a look at the quality of that trap?

13 Remember the testimony of Task Force Officer Garcia on
14 this very day. On December 4, the trap alarm kept going on
15 off. Transcript at pages 40 and 41. Officer Garcia said, "It
16 kept ringing like somebody was testing out the trap. It rang
17 several times," December 4, the same day as this telephone
18 call. We know why, because Jorge and Mr. Gomez, this
19 defendant, were together. He admitted that on the stand. He
20 said they were together that day. The trap alarm was going off
21 why? He was testing the trap.

22 What else do they say? Mr. Gomez says, "When
23 traveling and you go to different places, the car has space in
24 there and the seats go down." You know exactly what he's
25 talking about. There's a space. There's that gap in between

1 the bench and the cushion, you can look down, you can see the
2 trap, another explanation that defies logic and defies common
3 sense.

4 And by the way, remember the defendant's
5 cross-examination just probably an hour ago. I asked him when
6 he said that he wasn't concerned about a trap, he said he was
7 concerned about the engine. That was his goal, because when
8 you're traveling and you go to different places you want to be
9 sure that the engine is all right. OK. So I asked him on
10 cross-examination. Take a look at the transcript, take a look
11 at the whole transcript and tell us where it is -- where it
12 is -- that you were talking about the engine. And what did he
13 say? He actually said it was back here where he was saying:
14 "We were checking out the car. I was explaining to him that I
15 used to have a car like that." His testimony is that's about
16 the engine. Ladies and gentlemen, that's ridiculous. You know
17 it wasn't about the engine. You know it was about the trap.

18 What else did he say? "Back of the seat's a little
19 broken." This is the confidential source talking to Mr. Gomez.
20 "It can't be that we're the unluckiest people. The car's been
21 driven a lot and it's never had a problem." You heard
22 Mr. Jimenez-Baez's testimony on the stand. The problem is the
23 police. That's what they were talking about. Mr. Gomez, "And
24 I said to him it's because of the parts, the part that makes it
25 look different." What part? There's only been testimony at

1 this trial about one part in the car that looked different, and
2 it was Trooper Whittaker's testimony and he was talking about
3 the molding underneath the cushion of that back seat, the
4 molding that concealed the trap. That's the evidence, ladies
5 and gentlemen.

6 Mr. Gomez, "The problem is that where it's going those
7 people check everything." What was his explanation for this?
8 That he was taking the car to a buyer and he was concerned that
9 the buyer was going to check everything and that he would be on
10 the hook. Why is that a problem for somebody whose only job is
11 to drop off the car as a favor for his brother. He wasn't on
12 the hook for anything. He was the delivery guy. What's the
13 problem he was talking about? You know the problem. The
14 problem is the police check cars, especially cars in Louisiana
15 that have New Jersey license plates.

16 And then not content to merely talk about the quality
17 of the trap with the confidential source and the source's
18 supply in New Orleans, the defendant calls the confidential
19 source the following day -- this is December 5 -- to update him
20 about the status of the trip. Now, that's Government Exhibit
21 206T. He says he thought he was talking to the buyer of the
22 car -- that's his story -- down in New Orleans. Either way,
23 let's take a look at what he says. He says he'll be there
24 tomorrow. We know that's accurate. But what else does he say?
25 Person on the other end of the line says, "I'll bring you the

1 250 Diesel so that I can bring up both of them at the same time
2 in one trip." Are they talking about the delivery of a car,
3 ladies and gentlemen? No, they're not. You know, based on
4 this, based on the defendant's testimony, and all the other
5 evidence, they're talking about traps.

6 So here, ladies and gentlemen, we have not only the
7 defendant's transcripts, transcripts of him talking to the
8 confidential source, we have the most devastating evidence in
9 this case. We have a sustained effort yesterday afternoon and
10 this morning on the stand to get up there and to weave a story
11 and to try to get you to believe it. Now, the defendant has an
12 absolute right not to testify, but as I expect the judge to
13 instruct you, because he chose to testify, you should judge his
14 testimony in the same way you judge the testimony of any other
15 witness. Ask yourself, Does it make sense? Is it consistent
16 with your common sense? Is it consistent with logic and the
17 way that the world works and that people interact with each
18 other? The answer is no. He got up on the stand and made it
19 all up, lie after lie after lie. Things that made no sense
20 whatsoever. Ask yourself, Why would he do that? The answer is
21 clear. Because he had no other choice. If he told the truth,
22 he would admit to his participation in this cocaine-trafficking
23 conspiracy, so he couldn't do that.

24 I'm only going to take a few minutes and talk about
25 the defendant's testimony because I'm sure it's very fresh in

1 your minds.

2 Now, the defendant would have you believe from his
3 testimony that he came to New Jersey at the end of November,
4 November 22, after long being estranged from his brother Jorge.
5 He says they only talked about logistics for family funerals
6 for years. No personal conversations, no conversations about
7 family, about relationships, about jobs, about anything other
8 than who was going to sleep where and drive where at family
9 funerals. That was November 22. And his story is he didn't
10 meet Caronlay Ramon-Baez that day or the next day or even the
11 next day. He said he met Caronlay Ramon-Baez on November 25.

12 What else happened on November 25, ladies and
13 gentlemen? You saw those airline records, the date of issuance
14 of the tickets for this defendant and for Ms. Ramon-Baez to fly
15 down to New Orleans, issued on November 25, the same day he
16 says he met Caronlay Ramon-Baez. Does that make any sense?
17 No, it doesn't. And his explanation for that first trip, let's
18 just think about that for a minute. He says, he wants you to
19 believe that he comes to New Jersey, talks to his
20 long-estranged brother, meets a woman he had never met before,
21 and his brother asks him to take this woman on a consolation
22 trip down to New Orleans because their relationship is
23 strained, the relationship, mind you, between Jorge and his
24 ex-girlfriend when Jorge is already living with a different
25 woman. Of course could Caronlay get down to New Orleans

1 herself? She was a grown woman, of course she could have. But
2 no, obviously she wanted to be soothed and comforted by a guy
3 she had met just the day before, the long-estranged brother of
4 her ex-boyfriend. But that's where he met Ms. Ramon-Baez for
5 the first time. And this is his explanation for it. His
6 brother asked him, he says, because his brother knew he was a
7 driver and he lived in that type of town, so take her around so
8 she could see some family, because Jorge and Caronlay needed
9 some time apart. Ladies and gentlemen, that also is
10 ridiculous.

11 What else does he say? He says that when he got back
12 to New Jersey, less than a week later, his brother asked him to
13 turn around and drive down to New Orleans to drop off a car.
14 No explanation, mind you, for why Caronlay Ramon-Baez was going
15 for the ride to go back to a city she had just been to a week
16 before. No explanation for that. Again, they have no burden,
17 but he testified. No explanation. His whole goal, you heard,
18 was to get back to Converse, Texas, in the cheapest way
19 possible. Understandable. You heard him testify that the
20 flights from New Jersey down to Texas were expensive; they were
21 600 bucks, and so he wanted to get closer to Texas because the
22 flights there were cheaper. So what did he do? He flies down
23 at the end of November. Doesn't go from there to Texas. Comes
24 back up to New Jersey because his brother asked him to, his
25 long-estranged brother, and then he drives back down. He said

1 it's 1,200 miles in the car. He's down in New Orleans, and
2 what did he do then? Did he go to Converse, Texas? No. He
3 started driving back to New Jersey with Ms. Ramon-Baez. Those
4 are not the actions of a man who is trying to get back to
5 Texas. Those are the actions of a man who was driving a car
6 loaded with cocaine.

7 Ladies and gentlemen, I'm not going to go through any
8 more of the defendant's testimony. I trust you saw it for what
9 it was: lie upon lie upon lie, from a person who had two years
10 to look at the evidence and to try to connect the dots in a way
11 he hoped would make sense. But it did not make any sense, and
12 you know why. Ladies and gentlemen, you could convict the
13 defendant based just on his own words. But you have all of
14 these things. You have the testimony of Ms. Ramon-Baez. You
15 have the undisputed facts and the timeline of his trips down
16 and back from New Orleans, and you have, most important, his
17 own words, undisputed. All of these things are clear. All of
18 these things are consistent.

19 Ladies and gentlemen, the evidence is in and it is
20 overwhelming. You saw the evidence. You saw the transcripts,
21 205T and 206T. I don't think I need to go through those in any
22 great detail any more than we already have in this trial. You
23 saw the things that he said to the confidential source. You
24 saw the things that were concerning him. He was trying to get
25 traps, he was trying to get cars, he wanted to move more kilos

1 of cocaine, and he was concerned about the police. If you have
2 any questions about those transcripts, you can ask to see them.
3 It's not worth going through them any more.

4 The defendant at this point has had his day in court,
5 but ladies and gentlemen, make no mistake. Just because a case
6 goes to trial does not make it a close case. And this? This
7 is not a close case. Based on everything you've seen, based on
8 everything that you've heard at this trial, there is one, and
9 only one, conclusion from the evidence: that the defendant,
10 Sandy Gomez, is guilty.

11 Thank you.

12 THE COURT: All right. Ladies and gentlemen, we'll
13 now hear the defense summation from Ms. Todd.

14 MS. TODD: Thank you, your Honor.

15 On Monday morning, I stood before you and told you
16 that Sandy Gomez was an innocent man, and he is. And I still
17 believe that, and I believe that the evidence has established
18 that unequivocally. And I told you that I'd get back up here
19 at the end of this case and walk you through how the government
20 has failed to prove its case beyond a reasonable doubt.

21 (Continued on next page)
22
23
24
25

MS. TODD: We are at this moment. The government must prove beyond a reasonable doubt each and every element of the crime charged that Sandy Gomez agreed to participate in the conspiracy with Caronlay Ramon-Baez and Jorge Gomez, and that when he agreed to participate in the conspiracy that he knew that the purpose was to traffic narcotics. The Court will instruct you when the Court gives its charges that the government must -- not may -- must prove each and every element of the crime charged beyond a reasonable doubt.

Mr. Gomez is accused in the indictment of participating in the charged conspiracy since August 2014 through December 7, 2014, when he got arrested. We now know that's not true. All of the plotting and scheming and discussion of prices, quantity of cocaine, the size of the traps, all those Conversations were between Jorge Gomez and the confidential informant Antonio Jimenez-Baez. Mr. Gomez did not participate in any of those conversations, nor was he present during any of those conversations. There is not a single phone call, and all the phone calls were translated from Spanish to English that are in your binders and all of them are in evidence, and there is not a single phone call that establishes that Sandy Gomez knowingly participated in this conspiracy.

Now, Ms. Ramon-Baez indicated that during that December 4, 2014, 5:50 p.m., call which we have read to death, that Jorge Gomez said, my brother was not comfortable to the

1 confidential informant. You can read through the transcript.
2 There is nothing in there that says that, absolutely nothing
3 that says, my brother was not comfortable. And if you recall
4 when I asked Antonio Jimenez-Baez when he was speaking to the
5 second person that he did not recognize to be Jorge Gomez,
6 whether or not he knew what the relationship was with that
7 person, he had no idea. He didn't know that Sandy was Jorge's
8 brother.

9 Sandy came to New Jersey in November, late November,
10 after November 19, 2014 for one purpose, one purpose only. He
11 came to a funeral. His cousin Dorivee had passed. They grew
12 up together. She is like a sister to the family and all of the
13 family came together. He came up from Texas. The death
14 certificate, which is Defense Exhibit C, is in evidence. As
15 you can see, it indicates that Dorivee passed on November 19
16 and Sandy came up shortly thereafter. His son, 21-year-old,
17 Sandy Gomez, Jr., testified yesterday that they were all at the
18 funeral and he, too, was at the funeral.

19 Sandy Gomez did not come to New Jersey to traffic
20 cocaine. He came to a funeral. And the entire 2014 that was
21 the only trip he made. He had not been here in August, he had
22 not been here in September, he had not been here in October,
23 and he had not been here prior to November 19, prior to her
24 death. And his son testified that at the time he lived with
25 his dad in Texas, Converse, Texas, and he would see his dad

every day. He would go to work and come back. He would go to school and come back. Dad would be there. It's impossible for him to be here and be there at the same time.

Now, Sandy Gomez's reason for being in the truck was very simple. His brother asked him to drive the truck to someone in Louisiana named Charlie and Sandy's understanding was that Charlie was the new buyer of the vehicle because Jorge explained to him that he was in the business of buying and selling used vehicles and the confidential informant was the mechanic who repaired those vehicles. And Sandy accepted to drive the vehicle to Louisiana because at the time ticket prices from New Jersey to Texas were expensive. It was around Thanksgiving. Right after Thanksgiving, December 4, he said the tickets were around \$600. Jorge offered to, if he would drive the vehicle to Louisiana and drop it off to this new buyer, Jorge would offer the gas and the hotel and that's what happened. He didn't get paid for the trip. And the ticket prices from Louisiana to Texas, which borders each other, was a little over \$100. Great deal. Why wouldn't he do that to save some money. And so that was the only reason why he did that.

Now, there was all this talk about checking the vehicle, that Sandy knew the trap was there. But it's very simple. He is going on a long road trip, so he is checking the vehicle. Checks the oil, checks the air pressure, checks the gas. He goes to put his luggage in the back and it's crowded.

1 The trunk is not as big, can't fit everything.

2 And he does what we all do when we are putting stuff
3 in the trunk of a vehicle for those of us that drive, try the
4 fold the back seat down. It wouldn't go down. It sits
5 upright. He brings that to his brother's attention and they
6 get into this discussion because his brother knows why the seat
7 won't go down, because the trap is underneath. Sandy doesn't
8 know that. If he knew that, why is he calling the mechanic
9 confidential source even though Jorge at the time didn't know
10 this was a CI. Why is he calling and putting Sandy on the
11 phone and saying, talk to him? If he knew there was a trap
12 under that seat, why is he calling the confidential source?

13 Now, the government would like you to believe that
14 he's calling the confidential source because he's
15 uncomfortable. Every single witness who testified indicated
16 that the trap was not visible, that you had to know exactly
17 what you were looking for to find it. It was well hidden, not
18 visible to the naked eye. You have to go looking for it.

19 Sandy speaks to the confidential informant and he
20 tells him he has a similar truck, so he knows the seat can go
21 down. And after some back and forth, the confidential
22 informant agrees that the seat is a little broken. There is no
23 discussion about drugs, there is no discussion about a trap.
24 There is none of that. The exhibit is in evidence. It's in
25 plain English. Use your common sense, read it, and see what it

1 says to you. I'm of the belief that you'll come to the same
2 conclusion, that it doesn't say what the government wants you
3 to believe it says. You have got to make a lot of leaps and
4 bounds to get there.

5 If you will recall, the confidential informant had
6 told Jorge that he was a mechanic, that he repaired vehicles,
7 that he had a body shop. So none of this is as farfetched as
8 the government wants you to believe. So Jorge is running his
9 own operation. His own operation was between him and Caronlay
10 Ramon-Baez. The two of them are together in this all the time,
11 relying on each other. I went through the extensive history of
12 her relationship with him dealing with his suppliers, picking
13 up and delivering drugs, collecting money, selling it, lining
14 it up, packaging it in her mother's house. They have workers,
15 all of that. She is his right hand. They are together. This
16 is their operation.

17 Now, there were two trips to Louisiana. My client
18 didn't deny that. Never lied about that. He took those trips.
19 And it was innocent. He had no idea that there was a trap in
20 the vehicle. And you have to remember, Jorge couldn't leave
21 the State of New Jersey. He had an electronic bracelet. He
22 can't leave. He asked my client to drive the vehicle down to
23 New Orleans because he can't get out of the state. He would be
24 in trouble with the law if he did that.

25 Caronlay gives my client one story and she gives Jorge

1 the other story. And the other story with Jorge is that she is
2 in partnership with him. If you will recall, she testified she
3 admitted that she wanted out. She wanted a different life.
4 She was looking to Texas to see if she liked it. She also
5 discussed her relationship, her romantic relationship.
6 Although Jorge was living with another woman, it didn't seem to
7 be over because I asked her, and she said they were having
8 problems. She confided in Sandy Gomez about what was going on
9 in their relationship. She confided in him about her medical
10 problems, about medication that she was taking, and she
11 admitted that he was understanding. We are not pulling this
12 out of thin air. This is from the witness' own mouth.

13 As she said, whatever Jorge says she goes along with
14 it, and that's her testimony. The question was: And
15 everything that Jorge tells you you believe, correct? Yes.
16 She goes along with whatever program he's on. She is on board
17 with him because they are partners in crime.

18 The fact is, Ms. Ramon-Baez had two plans going. The
19 sob story that she was telling Sandy Gomez about her
20 relationship with Jorge and wanting to go to Texas to live
21 there. This is in her testimony. I asked her: You wanted a
22 change, right? And she said: Yes, I wanted to get out of
23 everything. And I asked her: You're looking for a new place
24 to live, right? And she says. No. I just wanted to leave
25 that work. And I pressed her. And Texas, you wanted to see

1 what it was like, correct? And she said yes. Wanted to see if
2 it was a place that you'd like to reside at some point, right?
3 She agreed. She said yes.

4 Now, Ms. Ramon-Baez told some very tall tales. I am
5 going to go through a few of them, just line them up for you.
6 She is what I call the gift that just kept on giving.

7 Before she testified, she met with the government many
8 times and wove what I consider a web of lies and by the time
9 she took the stand she just simply couldn't keep it straight.
10 When she realized the jig was up, she restored to, I don't
11 remember. That's her routine. I don't remember is a way of
12 avoid accepting that she had lied. This was important because
13 there was a pattern. There is a stipulation, and that is
14 Government Exhibit 1005 where it clearly states that we agree,
15 meaning the government and myself, that on or about September
16 28, 2016, Caronlay Ramon-Baez met with Assistant United States
17 Attorney Patrick Egan, an agent from the Drug Enforcement
18 Administration, a paralegal from the United States Attorney's
19 Office, and a Spanish interpreter. At that meeting Caronlay
20 Ramon-Baez said, in substance and in part, that Sandy Gomez
21 came to New Jersey from Texas around August 2014. And the
22 stipulation continues: It is further stipulated and agreed
23 that this stipulation, as Government Exhibit 1005, may be
24 received in evidence as a government exhibit at trial.
25 Because, as you will recall, when she was on the witness stand

1 she is trying to backtrack as to when he came because now she
2 realizes, it's not true. So it's October, some time in
3 November, she can't remember.

4 There is absolutely no communication in August between
5 my client and her, none in September between my client and her,
6 none in October of any sort between Sandy Gomez and
7 Ms. Ramon-Baez. Why? Because they didn't know each other.
8 They met each other for the very first time when he came to New
9 Jersey at that funeral some time after November 19, which is
10 when his cousin passed.

11 Now, Ms. Baez also said that when they went to
12 Louisiana my client spoke with somebody who had kilograms of
13 cocaine and the owner of the kilos said, hey, did you bring the
14 car with the secret compartment in it? This is where your
15 common sense kicks in because what drug dealer talks like that.
16 None. Did you bring the car with the secret compartment in it.

17 She also testified that the cost of renting the truck
18 was \$4,000. In fact, she insisted on it, that it was \$4,000,
19 and she said, Jorge paid \$2,700 up front and that Jorge told
20 the man that when Sandy came back he would pay the remaining
21 \$1300. This is her testimony. The government asked her: And
22 what did Jorge and that man discuss at that time? And she
23 responded: He delivered the SUV to Jorge. Jorge said how much
24 is it? He said \$4,000. Jorge said to him: I'll give you 2700
25 up front and when Sandy comes back I'll pay you the remaining

1 \$1300. That's her testimony.

2 First of all, we know that Sandy didn't rent that
3 truck. We know the rental of the truck did not cost \$4,000 and
4 that George never said anywhere when Sandy comes back he would
5 pay the balance of \$1300. That's nowhere in any recording at
6 all. And why she is doing this? Because she is desperately
7 trying to tie Sandy to this conspiracy. We know the truck cost
8 \$1500, which was paid by Jorge because we have a recording on
9 December 3, 2014. That is Government Exhibit 203T, page 16.
10 This is the body wire. This is the actual meeting between
11 Jorge Gomez and the confidential informant on December 3, 2014
12 where they discussed the price, quantity, and price of the
13 truck and when they could have it. And on page 15 of the same
14 transcript the confidential informant says: It's \$1500. And
15 Jorge says: Oh, I should give you the \$1500. Yes. That was
16 the price. Not \$4,000. And the \$1500 was \$500 per day for
17 three days. If you will recall, Antonio Jimenez-Baez, who was
18 the confidential source at that time, said, Ms. Baez brought
19 out a bag of money in a paper bag and Jorge counted \$1500 for
20 full payment.

21 The first trip to Louisiana was cut short. This is
22 the trip in November 2014. And not because they didn't get any
23 drugs. Because on cross-examination I asked her, it's simply
24 because Jorge wanted her back. Somehow he seemed to have had
25 this -- I don't know if it's control but, like she said, she

1 does whatever he says. And so I asked her. This is
2 Ms. Ramon-Baez on cross-examination. I asked her: And the
3 trip was cut short, correct? She answered yes. I asked: It
4 was supposed to be longer, right? She answers yes. It
5 depended? Yes. The next question was: Jorge wanted you back
6 earlier than you had expected, correct? Yes. He called you
7 and asked you to come back home immediately, correct? And she
8 said yes. There is no discussion that she is coming home
9 because they didn't pick up any drugs on that. The reality is,
10 Jorge wanted her back.

11 Now, according to Ms. Ramon-Baez, Sandy was broke but
12 offered her \$2,000 to go with him. This is the whole
13 conversation about asking to sit at the table. So this man
14 left his job in Texas, if you follow her logic, and comes to
15 work at a crack or cocaine table. There is no space for him
16 there. So he goes out and makes a phone call, according to
17 her, and says he can get drugs in Louisiana and offers her
18 \$2,000 to go on this trip with him. And I asked her if he paid
19 her \$2,000. And she said no. She expected payment when they
20 came back.

21 She further testified, and this is the part that just
22 makes no sense, that they go all the way to Louisiana in
23 December to pick up kilos and although he had not paid her she
24 goes along. He gets five kilos of cocaine without any money.
25 You can't make this up. The five kilos of cocaine that you

1 picked up, did he pay for that? No. He got them for free? Of
2 course. He just went to get it. That was it. And they were
3 going to pay him. So she wants you to believe that he goes and
4 gets five kilos from whomever, all the way down in Louisiana,
5 and these people don't take any money from him, just let him go
6 with the five kilos halfway across the country with the trust
7 and belief that when he sells it he will pay them. Does that
8 make any sense? Drug dealers notoriously don't trust anybody.
9 This, again, is where your common sense kicks in. Use your
10 common sense. Assess the reliability and the credibility of
11 this witness, and I have no doubt that you will come to the
12 same conclusion that that is just senseless.

13 But, like I said, Ms. Ramon-Baez is the gift that just
14 keeps on giving. She testified that after they got the kilos
15 of cocaine, they put it in the trap, started on their journey.
16 And then he, Sandy, pulled over on a dark street and he
17 repacked the cocaine two and two and one on top. I'm not going
18 to put all the photos in. They are all in evidence. You can
19 take a look at it and you can see how they were packed when it
20 was opened. Certainly doesn't look like that.

21 But I want to draw your attention to, we stop at a
22 dark street and when Sandy opened the secret compartment, which
23 was actually from his side, as you will recall, Sandy was
24 surveilled. They gave all of the stops coming into Louisiana.
25 They described that.

1 Agent Garcia was one of the first witnesses who
2 testified and he spoke about their observations of the truck
3 coming into New Orleans and they also spoke about their
4 observations of the truck when it was parked at the hotel.
5 They had eyes on it. Watched it when it left and tracked it
6 from wherever it went to the gas station, to the supermarket,
7 to the chicken spot, Popeye's. Nothing in his testimony
8 indicated that they observed him stopped on a dark street.
9 There was no such evidence. She is making it up because, like
10 I said, she is desperately trying to tie him to whatever she
11 was doing with Jorge.

12 You have to ask the question. The government makes
13 this to do about this 402T, all of these text messages. The
14 reality is, she is texting who are say. What is Sandy doing?
15 He is sleeping, for crying out loud. And she says that in the
16 text messages. He is asleep. And he is asleep for a number of
17 hours. When Sandy woke up, she was dressed. At one point she
18 needed to go to the car to get her medication. We don't know
19 how long. She was down there. She claims Jorge did not show
20 her how to operate that trap. Do you really believe that? She
21 knew everything about what he was doing, everything from A to
22 Z, because she was his right arm. She was his partner. She
23 was his confidant. She knew everything.

24 She also tried to make it seem, as everybody is trying
25 to make it seem, that the reason why Sandy complained about the

1 seat is because he knew the trap was broken. I am just going
2 to put her testimony out there because she claims that the seat
3 was loose and that Sandy didn't have much confidence in the
4 truck as a result. All of this to try to suggest to you that
5 Sandy knew something was wrong with the seat as a result of the
6 trap underneath it.

7 You know who else had an opportunity to examine that
8 seat? Trooper Whittaker. When he pulled over the truck and he
9 was looking around, he had an opportunity to observe what was
10 going on in that truck. And I asked him. I was asking him
11 about the seat. And so in clarification he says, you're
12 talking about the seat where you lean back against? Yes. It
13 was upright. And that part of the seat, was it firmly in
14 place? Yes. You couldn't move it. No. And it was not moving
15 back and forth, right? Correct.

16 Now, the government, Mr. Cooper in his closing a few
17 minutes ago, said, the pictures in the defense exhibit
18 corroborate Ms. Ramon-Baez's testimony that this was a space in
19 the seat or the seat was loose and the pillows and the blankets
20 were used to prop up the seat, to the back seat, Mr. Cooper
21 says. I have to tell you, that must be some super heavy
22 blankets and pillows to be propping up that seat. Again,
23 common sense.

24 The license plate also became a fertile discussion for
25 Ms. Ramon-Baez and Trooper Whittaker and both of them made it

1 seem like that Sandy covered the license plate. When I asked
2 Trooper Whittaker if that was simply a license plate frame, he
3 reluctantly said yes. Didn't just want to say yes. This is
4 another occasion where I'm asking you to use your common sense
5 For those of us who have cars or those of us who don't, we see
6 this all the time, not unusual. This is Government Exhibit
7 101. That's a license plate frame. We all have that on our
8 cars. It's not unusual. It's not trying to cover up the
9 plate. We use that to keep the plate in place. Common sense.

10 Where did Mr. Gomez go when he went to Louisiana?
11 Normal places that people go when they travel. Gas station,
12 places to get food. He went to the store to get souvenirs to
13 his children. Absolutely no one saw him engage in any
14 narcotics-related activity. They didn't see him receiving any
15 packages, transferring packages to anybody. And no one saw
16 Mr. Ramon-Baez either engaging in any criminal activity. On
17 the drive back, on that December 4 trip, she was supposed to
18 drive back. In fact, when Sandy goes back to tell her that the
19 buyer did not accept the car and it has to go back, she
20 pretended to be upset, but also, she had already known. Why?
21 She had already spoken with Jorge. Then she claims she is
22 sick. Her medication makes her drowsy. She has never driven
23 that distance. And she is just dramatic. Why? It's all part
24 of the act to get Sandy to drive back.

25 Where was she seated when the vehicle was stopped? In

1 the passenger's seat. Why? Because she figured that the
2 passenger would not get in trouble. You are not the one
3 driving the car. We know that because there is some
4 conversation about that with Jorge Gomez telling the CI on that
5 December 3, 2014 call. That's GX 2017. Take a look at it,
6 where he's saying, they usually let passengers go. That was
7 the plan.

8 We know her involvement with drugs is extensive. I
9 went through that. That took a minute to get through all of
10 that. All the suppliers and buyers and quantities of heroin
11 and cocaine that she and Jorge engaged in from 2012 up to her
12 arrest was seemingly endless.

13 What is most troubling is her use of other people's
14 Social Security numbers. That goes directly to her credibility
15 and honesty. Remember, I asked her, do you consider yourself
16 an honest person and she looked me straight in the eye and said
17 yeah. Then when I confronted her about using other people's
18 Social Security card and that it was stolen, she challenged me
19 that it's not stolen. I paid \$900 for it. Because she paid
20 for it, that made it all OK. And then the price went up, she
21 said, to a thousand dollars and she was OK with that because
22 she paid for it.

23 Ms. Ramon-Baez is the type of person that would sell
24 her soul to the devil, sell your soul to the devil to save
25 yourself. Think about it. Her daughter is three years old by

1 now. Was born in 2013. And she took her daughter's Social
2 Security card and gave it to somebody else without even
3 thinking twice about it. What do you think she wants to do to
4 him? She hardly knows him.

5 Now, the government, I believe, has not satisfied
6 their burden of venue, that the crime that Mr. Gomez is charged
7 with occurred in this district. Although the burden is not
8 proof beyond a reasonable doubt, it's preponderance of the
9 evidence. However you look at it, they have not satisfied it.
10 The only witness who testified as to any occurrence occurring
11 in this district is Antonio Jimenez-Baez, that at one point
12 when he called Jorge he was in Yonkers.

13 Mr. Jimenez-Baez admitted that he's an admitted liar.
14 He got really good at it. And besides him saying he was in
15 Yonkers, New York on one of the four calls to Jorge, there is
16 no other testimony that any of the conduct happened here in
17 Manhattan, Bronx, Westchester, Yonkers, or anywhere in the
18 Southern District of New York. We have no phone records to
19 establish that he was actually in New York and we know that he
20 lied about everything. He told us so himself. Remember, he
21 was telling Jorge he was a mechanic, that his name was Daniel,
22 Charlie or Samuel or whatever. None of it was true. He didn't
23 own a mechanic's shop, didn't own a body shop, anything of the
24 sort.

25 And if you will recall his testimony, that's him right

1 there. I asked him: You don't have a mechanic shop? He
2 answered no. Nor do you have a body shop? He says no. Nor
3 are you a mechanic? No. But you represented to Jorge that you
4 fix cars, correct? Yes. And that you work on cars? Yes, he
5 says: All of what he was telling Jorge, including that he was
6 in Yonkers all eyes, because that was his job. And outside of
7 him saying it, there is no other record to establish that he
8 was in Yonkers. He's a highly paid criminal making an
9 incredible amount of money with ease; as he told you, around
10 \$300,000. He has never worked an honest day in his life. This
11 guy, Antonio Jimenez-Baez, who is facing a life sentence for a
12 major flirtation with narcotics, gets one year in jail.

13 And Agent Garcia, the first witness, who was working
14 with him, couldn't care less what his last name was. When I
15 asked him, what's his last name, all I know, I know him as
16 Tony. Do you know anything about his criminal background? No.
17 Whether he is being prosecuted for crimes? No. He could have
18 been a serial killer, a murderer, anything. He wouldn't know
19 because it didn't matter.

20 Antonio Jimenez-Baez claimed that the wires were all
21 over the place in the vehicle. That was part of the trap. He
22 said that. He said it was a lousy job. All of the photos are
23 in evidence. You should take a look at them and see if you see
24 any wires just hanging loose anywhere.

25 While you are doing that, just recall that the

collective testimony from just about all the witnesses who had an opportunity to look at the strap said it was not obvious, it was hidden, the molding around was done to make it look like factory, like it came like that out of the factory. There was no gap in the seats. You can look at the pictures in evidence.

Trooper Whittaker was on the stand yesterday. He is the officer who pulled over Sandy Gomez and Caronlay Ramon-Baez. He never testified about observing any wires. That never came out at all. Why? Because it doesn't exist. We know that Antonio Jimenez Baez, for him, it's what's best for him. I asked him. Because the most important factor always has been what's important for you, right? What's best for you? He responds, for my family. And I said for you? And he agreed, yes.

THE COURT: Ms. Todd, let me break in for a minute. Let's all stand, ladies and gentlemen, take a moment to stretch and Ms. Todd will continue.

MS. TODD: Mr. Jimenez-Baez also told you that the more valuable information he provided, the more he gets paid and that he is motivated to make money, and his motivation was to get paid. And if you will recall his testimony, that's Mr. Jimenez right there. I asked him, do you get paid based on the value of your information you provide to the government? After I get sentenced, yes. So is it fair to say then the more valuable the information, the more you get paid? Yes. You're

1 motivated to make money, correct? Yes. And so in every
2 conversation you have your motivation is to make sure that you
3 get paid, correct? Yes.

4 Now, you saw the video of Mr. Gomez when he was pulled
5 over. He immediately provided his driver's license to the
6 officer. He didn't fuss. He is calm. He's cooperative. He
7 comes to the officer as directed instead of running away. This
8 is not the behavior of a guilty person. He turns around so he
9 can be patted down. The trooper finds nothing illegal on his
10 person, no weapons, no large amounts of cash. Sandy is made to
11 stand on the side of the road.

12 He's not in handcuffs and he does not make a run for
13 it. He doesn't offer the officer a bribe. You will recall,
14 he's searching for quite some time. He doesn't claim he is
15 sick, take me to the hospital so he can disrupt the flow of
16 what's going on. He doesn't fight with the officer, doesn't
17 quarrel with him, doesn't argue with him. In fact, he signs a
18 consent form and the consent form gives the officer permission
19 to search the vehicle. This is not what someone who is guilty
20 does. His entire behavior is consistent with someone who is
21 innocent.

22 Now, you will recall there were photographs, and they
23 are all in evidence. There is Defense Exhibits D, E, F, and G.
24 But inside of the trap there were shopping bags containing the
25 narcotics that were recovered. When you look at those

1 photographs, those packages are stuffed in that compartment.
2 Somebody had to push them in there. This is no fingerprint
3 evidence at all. I promise you, if his fingerprints were on
4 those bags, you would have heard about it. The government
5 would have paraded that in front of you. There wasn't any.
6 There was no fingerprints of him inside of the trapped area
7 either.

8 Now, there was some talk about the alarm on the trap
9 that was set up so when the trap was accessed, the agents would
10 receive the signal that the trap was accessed. At no time did
11 they ever receive the signal. Conveniently for them it wasn't
12 working. It wasn't working.

13 Mr. Gomez's phone was seized when they arrested him.
14 If there was any evidence of any narcotics-related activity on
15 that phone, you would have been looking at it. You didn't get
16 any. Why? Because there was nothing on the phone that suggest
17 that he was engaging in any criminal activity.

18 THE COURT: Ms. Todd, we are going to take a brief
19 recess.

20 Ladies and gentlemen, we will be back to you very
21 shortly. Don't discuss the case yet because it hasn't been
22 given to you. We will be back to you very shortly.

23 (Jury not present)

24 THE COURT: Sorry for the interruption, Ms. Todd, but
25 one of our jurors was nodding off. I thought that the stand-up

1 stretch routine would be adequate. It was for a while. But
2 then it started happening again. I just wanted to take a brief
3 recess, give him an opportunity to deal with that, and we will
4 resume in five minutes.

5 MS. TODD: I'm almost finished, your Honor. I have
6 five minutes or less.

7 THE COURT: How long does the government expect for
8 rebuttal?

9 MS. CROWLEY: Fifteen to 20 minutes.

10 THE COURT: We will resume in five minutes.

11 (Recess)

12 THE COURT: Are we prepared to proceed?

13 MS. TODD: Yes, your Honor.

14 (Jury present)

15 THE COURT: Ms. Todd. Please continue. Sorry for the
16 interruption.

17 MS. TODD: Thank you, your Honor.

18 Sandy Gomez's mere presence in the vehicle, without
19 knowledge that there was a trap in the vehicle for the purpose
20 of trafficking narcotics, is not proof beyond a reasonable
21 doubt. Think about it. It's like you're getting a ride from
22 one of your friends. You get in his car or her car. The car
23 gets pulled over. There is a gun in the trunk. You are the
24 passenger. It's not your car. Should you be responsible for
25 that?

1 Mr. Gomez had absolutely no knowledge that by agreeing
2 to deliver the vehicle to someone he believed was the owner,
3 based on the information provided to him by Jorge, that Jorge
4 was in the business of buying and selling vehicles and that the
5 confidential source who goes by many names, whether it's
6 Samuel, Daniel, that he was the mechanic who was responsible
7 for repairing these vehicles. Sandy Gomez had no knowledge and
8 the government must prove that he knew. There is no evidence
9 that he knowingly joined this conspiracy.

10 As the Court will remind you and instruct you when he
11 gives the instruction, the government must prove each and every
12 element of the crime charged beyond a reasonable doubt. They
13 must do that. Not may, not more likely. They must. And you
14 must hold them to that burden of proof. The evidence is clear,
15 Sandy Gomez is not guilty and the government has failed to
16 prove beyond a reasonable doubt that he is. I'm asking you to
17 return the only fair and just verdict in this case and return a
18 verdict of not guilty. Thank you.

19 THE COURT: Ladies and gentlemen, we will now hear the
20 government's rebuttal.

21 MS. CROWLEY: Your job as jurors is to find the truth,
22 to listen to the witnesses who testified, to review the
23 exhibits, to listen to the arguments of the attorneys, and to
24 find the truth. And here is the thing about the truth. It's
25 simple. It makes sense. It adds up. It's supported by the

1 facts. You just heard Ms. Todd's summation. And what she
2 tried to do was focus you away from the truth, to distract you
3 and ask you to ignore nearly all of the evidence that you heard
4 throughout this short trial and to believe something that just
5 does not make sense. Don't let her do that. You know what
6 happened in this case. You listened carefully to the witnesses
7 and you paid close attention to the evidence. You know that
8 Sandy Gomez, the defendant, was dealing cocaine and he got
9 caught.

10 Now, as Mr. Cooper explained to you, the government
11 bears the burden of proof in this case and we embrace that
12 burden. A defendant has absolutely no obligation to testify.
13 He doesn't have to put on a single witness or say a single
14 word. But when he does, when he testifies and calls witnesses
15 and when his lawyer makes arguments as Ms. Todd did today, the
16 government can respond and we can ask you to scrutinize that
17 testimony and those arguments and ask yourself if they make any
18 sense.

19 Now, I want to talk for just a minute about what the
20 defense is asking you to believe happened back in November and
21 December of 2014. Before I do that, I am just going to ask you
22 to remember that before the defendant took the stand yesterday
23 and today, he had seen all of the government's evidence in this
24 case. As he testified earlier today, he had listened to the
25 calls. He had reviewed the transcripts. He had seen the

flight records, the text messages. He had gone through the notes that the prosecutors took of our meetings with the witnesses, and then he sat through this trial and he listened to the testimony of every single witness. And I submit to you that the story he told, the story Ms. Todd is asking you to believe makes no sense. It is something he made up two years after it happened and contorted and twisted to fit around the facts that the defendant couldn't run away from. It makes no sense.

What is she asking you to believe? That this was all a big setup? That the defendant had no idea that there was any cocaine in the car that he was driving the night he got arrested, that he went down to New Orleans because he was a good guy doing his brother a favor, that the drugs had been secretly stashed in the trap at some point when the defendant wasn't looking and then, unluckily for him, the police pulled him over and found the cocaine? That is ridiculous. You know it's not right.

You know that because Caronlay Ramon-Baez told you so. You know that because all of the evidence in this case told you so. But you also know that because it makes no sense. Think about what the defense is asking you to believe, that the defendant went down to New Orleans twice within the span of one week because Jorge told him to. The first time? Because Jorge and Caronlay had just broken up and they needed some space. So

1 the defendant agreed to get on a plane, fly to New Orleans with
2 her because he was a good guy who wanted to do his brother a
3 favor.

4 Now, according to the defendant, he did that despite
5 the fact that he wasn't close with Jorge, that he didn't really
6 trust him and that he hadn't really spoken with him in several
7 years. That's transcript, page 373, the defendant's testimony.
8 But for some reason he decided to get on a plane, fly down to
9 New Orleans, and hang out with Ms. Ramon-Baez, a person he had
10 just met the day before.

11 And then a few days later the defendant agreed to go
12 back down to New Orleans again with Ramon-Baez again, this time
13 to deliver a car to one of his brother's customers. That's
14 what the defense is asking you to believe. And, by the way,
15 what was the defendant's explanation for why he made this
16 second trip? Because he wanted to get back to Texas but
17 couldn't afford a plane ticket from New Jersey to Texas.
18 Instead, he decided he would drive to Louisiana and get on a
19 plane from there to Texas. You'll recall that he testified he
20 couldn't afford plane tickets from New Jersey directly to Texas
21 because it was so close to the holidays the plane tickets cost
22 \$600. He couldn't afford that. But, wait a minute. You heard
23 Debbie Erickson testify and you saw in the ARC flight records
24 that the tickets that were purchased the week before, actually
25 right after Thanksgiving, they were only about \$230.

1 By the way, you didn't see any records in those ARC
2 flight records of the defendant booking a trip from New Orleans
3 to Texas, the trip that he said he was going to make. But the
4 defense is asking you to believe that he agreed to drive down
5 for 40 hours to New Orleans because he wanted to make it home.
6 Nonsense. That's a story he made up, a story he twisted and
7 contorted in an attempt to explain away the evidence in this
8 case. The flight records, the text messages, the fact that he
9 was the one driving the car. But this doesn't make any sense.
10 The defendant went to New Orleans to get the drugs, drugs that
11 he had arranged to pick up.

12 And then what about the defendant's first call to
13 Antonio Jimenez Baez, the confidential source? We have heard a
14 lot about that, the call where the defendant complains about
15 the back seat of the car. Why does he make that call? How
16 does the defense explain it? Because he couldn't fold down the
17 back seat to fit all three pieces of luggage in the trunk or
18 was it because he might stop along the way and buy toys for his
19 kids and he was worried that he wouldn't fit everything in the
20 trunk of the GMC Denali SUV? Or was it because he was afraid
21 the buyer of the car wouldn't like the back seat and he didn't
22 feel safe? His words. That's what Ms. Todd is asking you to
23 believe. That's what she says was the purpose of that call.

24 She is also asking you to believe, by the way, that
25 the defendant is incredibly unlucky. What a terrible

1 coincidence that the part of the SUV that the defendant notices
2 and calls the CS about, the confidential source, happens to be
3 the exact part of the car covering the secret compartment, the
4 compartment, by the way, that both Jimenez-Baez and Trooper
5 Whittaker said they immediately noticed when they opened the
6 back door of the vehicle. That's transcript pages 103 and 336.
7 You can take a look at that.

8 But the defendant didn't notice that trap. He didn't
9 notice that compartment even though he owned the same car and
10 used to work for the company that made it. He didn't notice it
11 even though he was a professional driver and he inspected every
12 piece of that car. He noticed the fact that the seat wouldn't
13 fold down and he was worried he wouldn't be able to fit his
14 luggage inside it. That's what Ms. Todd is asking you to
15 believe. That's nonsense. That's a story the defendant made
16 up to try to explain away that phone call, and the explanation
17 makes no sense.

18 And then what about the license plate cover. The
19 defense wants you to believe that the defendant noticed the
20 license plate was loose in Louisiana. By the way, I guess he
21 didn't notice it back in New Jersey when he carefully inspected
22 every part of it with his brother, but he noticed it was loose
23 in Louisiana, so he went to a store, he bought a frame, and he
24 put it on to make sure that the plate stayed put, a car that he
25 was about to give to someone else. And the frame just happened

1 to cover one part of the license plate. Which part? The part
2 that said New Jersey. The part you knew the defendant was
3 concerned about because you saw it in Ms. Ramon-Baez's text
4 messages, what bad luck for the defendant, what a terrible
5 coincidence.

6 Ladies and gentlemen, you know why the defendant put
7 the license plate cover on the car. It is because he didn't
8 want the police to see that it said New Jersey and pull him
9 over because he was transporting cocaine.

10 The defendant could not run away from these facts. He
11 could not ignore this evidence, so he made up a story designed
12 to explain them away. Now, again, the defendant bears no
13 burden in this case. But when he takes the witness stand and
14 testifies, you should scrutinize his testimony the same way you
15 would any other witness and ask yourself if it makes any sense,
16 if it is supported by the evidence. You know that it's not.

17 I just want to talk for a second about other evidence
18 in this case, evidence that you didn't hear the defendant talk
19 about and you didn't hear Ms. Todd talk about, evidence that
20 was ignored. Why was it ignored? Because he couldn't explain
21 it and because it was absolutely devastating evidence of his
22 guilt. Like the fact that the defendant drove to New Orleans
23 only during the night and slept during the day so his New
24 Jersey license plates wouldn't be so obvious to the police.
25 You didn't hear anything about that during Ms. Todd's

1 summation.

2 Or like Caronlay's text messages to Jorge on the trip
3 down to New Orleans, Government Exhibit 402T. December 5,
4 2014. He wants to go at 5:00 because the license plate is from
5 New Jersey. She is reporting to Jorge that the defendant
6 wanted to wait to drive at night. December 7, 2014. Man, I
7 don't believe with all that work they called. She is reporting
8 to Jorge that they were waiting for the people to call and tell
9 them that they had the cocaine. And then a little while later
10 he already left to see the people, after the defendant had left
11 the hotel to pick up the drugs.

12 What about Detective Garcia's testimony that he saw
13 the defendant alone in the car on December 7, that he saw the
14 defendant pick up another man, drive him around, and drop him
15 off?

16 You just heard Ms. Todd talk for a while about how no
17 one actually saw the defendant get handed cocaine. She spent a
18 long time telling you about that. Well, first of all, you
19 heard Detective Garcia say that they weren't watching the
20 defendant all the time. There were times that they lost track
21 of him. And, second, even under Ms. Todd's version of events,
22 she undermines her own theory. The drugs got in the car
23 somehow, right. There is no dispute about that. They were
24 found there when Trooper Whittaker pulled the defendant over on
25 December 7, 2014. Those drugs got in the car without the agent

1 seeing it and without the trap alarm going off. But apparently
2 the fact that they didn't see this happen means that Sandy
3 Gomez didn't put them there. You know that's ridiculous.

4 What else did Ms. Todd ignore today? The defendant's
5 statements to Trooper Whittaker after he got pulled over on
6 December 7, that he had come from North Carolina, that he had
7 been to a football game. Ms. Todd just stood up here and said
8 that the defendant's behavior when he was pulled over was not
9 consistent with that of a guilty man because he didn't run
10 away, because he didn't claim he was sick or try to bribe the
11 police officer, because he signed the consent form.

12 First of all, you know why he signed that consent
13 form. That was the whole purpose of the trap. They didn't
14 think that the police would find it, so he was fine with
15 letting them search.

16 But you know what behavior was consistent with that of
17 a guilty man, the defendant's lies. Why did he tell those
18 lies? Why didn't he just tell the truth? The same thing he
19 told you on the witness stand today. He didn't tell you what
20 he told you on the witness stand because that wasn't true and
21 he lied to Trooper Whittaker because he was guilty, because
22 there were drugs in the trap in his car.

23 Ladies and gentlemen, what Ms. Todd is asking you to
24 believe happened back in December of 2014 makes no sense. It
25 is undermined by all of the actual evidence in this trial and

1 it ignores the key pieces of evidence that are absolutely
2 devastating to the defendant.

3 I just want to say one more thing about the story that
4 the defense is asking you to believe. Think about this. If
5 this story is true, if Ms. Todd's version of events actually
6 happened, then that would mean that Jorge Gomez is the absolute
7 worst drug dealer in the world. That's what she is asking you
8 to believe, right. She must be. Because who else would send
9 someone across the country to pick up drugs who had no idea
10 that he was picking up drugs? Keep in mind, Jorge Gomez had
11 several employees who worked for him in his house every day
12 packaging heroin, but for some reason he decides to send his
13 brother, who he hardly spoke to, who he didn't really know,
14 without telling him what he actually wanted him to do. That's
15 crazy. Only the world's worst drug dealer would do that.

16 Also, Jorge had to believe that the defendant wouldn't
17 notice the trap. The defendant, a professional driver, the
18 defendant, who had the same car, who worked for the company
19 that made the car. A trap that, despite what Ms. Todd just
20 told you, two defendants told you they noticed right away. And
21 then once the defendant gets down to New Orleans, Jorge has him
22 pick up the drugs, again, without the defendant knowing what
23 he's doing.

24 And, remember, Jorge's plan also relies on the
25 defendant disappearing for a while after he met the drug

1 supplier, the guy the defendant supposedly believed would be
2 taking the car so that the supplier could sneak the drugs into
3 the trap without the defendant knowing.

4 Finally, Jorge had to count on the defendant feeling
5 sorry enough for Ms. Ramon-Baez that he would agree to drive
6 her back up to New Jersey; again, without him knowing that
7 there were drugs in the car. Who would come up with a plan
8 like that, a plan that would fail in so many ways, a plan that
9 relied completely on someone who supposedly wasn't even in on
10 it? The world's worst drug dealer. Jorge must have been the
11 world's worst drug dealer. That's what Ms. Todd is asking you
12 to believe.

13 Actually, she is really not. You listened carefully
14 and you realize that defense counsel doesn't actually think
15 that Jorge was a bad drug dealer. In fact, she thinks he's a
16 really, really good one. She spent a long time on
17 cross-examination of Ramon-Baez and in her summation talking
18 about what a great drug dealer Jorge Gomez was, how he was
19 moving all of that heroin, how he bought all those Mercedes,
20 how he had all those customers. Yet she is asking you to
21 believe that despite his years of experience, despite his vast
22 success as a prolific heroin dealer -- heroin, by the way, not
23 cocaine -- Jorge sent a guy he didn't like and didn't trust to
24 deliver five kilos of cocaine without knowing. That's
25 ridiculous. It doesn't make sense. If Jorge had wanted to

1 pick up cocaine in New Orleans, he would have sent one of his
2 employees or he would have sent Ramon-Baez by herself. The
3 truth, ladies and gentlemen, is simple. It makes sense. That
4 cocaine wasn't for Jorge. It was for the defendant. He drove
5 down to New Orleans to get it and he got caught.

6 I want to talk very briefly about another argument
7 that you just heard from Ms. Todd that Caronlay Ramon-Baez is a
8 liar. She needs you to believe that because Caronlay's
9 testimony alone is enough to convict the defendant. You don't
10 need to believe another witness or see another piece of
11 evidence to find him guilty if you believe her and defense
12 counsel knows that, so she needs to convince you that
13 Ramon-Baez is a liar.

14 Ladies and gentlemen, you know that Ms. Ramon-Baez was
15 not lying when she testified. You know she was telling the
16 truth. How do you know? Three reasons. First, everything she
17 said is totally consistent with the other evidence in this
18 case. Second, she has every incentive to tell you the truth.
19 And, third, if she wanted to lie, she could have done a much
20 better job.

21 Let's start with the first one. You know
22 Ms. Ramon-Baez testified truthfully because every single thing
23 she said was completely backed up by other evidence in this
24 case. Mr. Cooper went through that evidence with you. I am
25 not going to go through it again now. Flight records, text

1 messages, transcripts of recorded calls, DEA agent
2 surveillance, the license plate cover, the lies the defendant
3 told to Trooper Whittaker when he was pulled over. Ladies and
4 gentlemen, every single thing Ramon-Baez told you was backed up
5 by the other evidence in this case.

6 How does defense counsel explain that? That she just
7 got lucky, that she just so happened to pick the right lies, to
8 say the right things that were consistent with what every other
9 witness and every other piece of evidence in this case told
10 you? Of course not. Ramon-Baez's testimony was consistent
11 with the other evidence because she was telling the truth. She
12 told the story that actually happened, not the one that it was
13 twisted and contorted to explain away all the facts in this
14 case.

15 Now, there is no question that Ms. Ramon-Baez has
16 committed serious crimes. She was a drug dealer. She
17 possessed guns and she lied on her tax returns. We are not
18 saying that she is a good person and we are not asking you to
19 approve of what she has done in the past. The question for you
20 is whether she told the truth on the witness stand. I want you
21 to think about her incentive, think about what happens to her
22 if she lies. She explained to you how her cooperation
23 agreement with the government works. You can read it. It's in
24 evidence. If she testifies truthfully on the stand, the
25 defendant writes a letter to the judge explaining that he may

1 but doesn't have to sentence her below the 15-year mandatory
2 minimum. But if she lies, if she tells a single lie, that
3 agreement gets ripped up. She goes to jail for a minimum of 15
4 years. And remember, that letter from the government, the
5 letter that allows the judge to go below the mandatory minimum,
6 that does not depend at all on whether defendant is guilty. It
7 depends on whether Ms. Ramon-Baez told the truth. Ask yourself
8 why would she lie. It would be totally crazy for her to lie in
9 this situation. She has nothing to gain and everything to
10 lose.

11 THE COURT: You need to wrap it up, Ms. Crowley.

12 MS. CROWLEY: OK.

13 Finally, if Ramon-Baez really was lying, as Ms. Todd
14 wants you to believe, then she is a really bad liar. If she is
15 lying to save her own skin to get out of jail earlier, couldn't
16 she have done a better job at it? Think about it. You heard
17 from her. When she met with prosecutors, she told them every
18 single crime she has committed in her past. She told them
19 about her own conduct, about Jorge Gomez's conduct, about her
20 family members' conduct. She told you about the year she spent
21 packaging guns, she told you about the drugs, she told you
22 about the fraudulent tax returns, and she told you that the
23 government didn't know any of that until she told them. If she
24 were lying wouldn't she admit to all of that? Why would she
25 implicate herself, her former boyfriend, her family, just to

1 pin everything on Sandy Gomez? She wouldn't. She wouldn't do
2 that and she didn't do that because she wasn't lying.

3 I am just going to talk about one more thing that
4 Ms. Todd mentioned during her summation and that's venue.

5 (Continued on next page)

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2 MS. CROWLEY: She said that the government didn't
3 prove that any of this conspiracy happened in the Southern
4 District of New York. Judge Gardephe's going to instruct you
5 that that's a legal requirement of this crime. But what
6 Ms. Todd told you was wrong. First, you heard this
7 confidential source, Jimenez-Baez, was in Yonkers during the
8 time that he made the calls to Sandy Gomez and Jorge Gomez. He
9 was in Yonkers. That's Government Exhibits 205 and 2062T.
10 That is enough to satisfy venue. And what did he say to Jorge
11 during that call? That he was in the towers. He told you what
12 that meant, Manhattan, New York City. That's Mr. Jimenez-Baez
13 Baez's testimony. That's enough to satisfy venue. And what
14 did they discuss during that call? Jimenez-Baez tells Jorge
15 he's crossing -- over what -- the George Washington Bridge into
16 New Jersey. That's enough to satisfy venue.

17 But you also have Ms. Ramon-Baez's testimony. Where
18 did she say the drugs that she and the defendant went down to
19 pick up were headed? To New York. That's her testimony.
20 Remember, you only have to find that one piece of this act, of
21 this conspiracy happened in the Southern District of New York.

22 Listen to the judge's instructions on venue. The
23 calls from the Southern District of New York, the drugs
24 intended for the Southern District of New York, that's enough
25 for venue.

1 I'm done talking to you now. It's finally time for
2 you to go back to the jury room and deliberate. No more
3 witnesses. No more lawyers arguing. It's time for you to
4 decide the outcome of this case, and I want to take a second
5 before you do that to thank you for paying close attention
6 throughout this trial. Both parties appreciate the care and
7 consideration you've given each witness. This case is
8 important. Every case is important, but this case is not hard.
9 You know that.

10 You heard the testimony, you saw the evidence. Sandy
11 Gomez made an agreement to distribute more than five kilos of
12 cocaine, a lot more, and he went down to New Orleans to get it.
13 He picked up five kilos and stashed it in the trap in his car,
14 and he got caught. You know that.

15 You heard the testimony, you saw the evidence. You
16 know it's the only story that makes sense, and when you go back
17 there and think about it and talk through the facts of this
18 trial, you will find that there is only one conclusion
19 consistent with the evidence and consistent with your common
20 sense: that the defendant is guilty as charged.

21 Thank you.

22 THE COURT: Mr. Ruocco, would you please distribute
23 the jury instructions to the jury.

24 Ladies and gentlemen, I will now instruct you as to
25 the law that governs this case. You have been handed a copy of

1 the instructions I will read. You should feel free to read
2 along with me or to just listen to me, whichever you prefer.
3 You will be able to take a copy of the instructions back into
4 the jury room, and you will be able to consult these
5 instructions during your deliberations.

6 There are three parts to these instructions. First
7 I'll give you general instructions about your role, and about
8 how you are to decide the facts of the case, that is, what
9 happened. Second, I'll give you instructions as to the
10 specific charge in this case. Third, there are concluding
11 instructions about such matters as communications with the
12 Court, about deliberations, and about returning a verdict.

13 It is important that you listen carefully. I am
14 reading these instructions from a prepared text because the law
15 is made up of words that are very carefully chosen. This is
16 not a time to ad lib. When I tell you what the law is, it's
17 critical that I use exactly the right words.

18 My duty at this point is to instruct you as to the
19 law. It is your duty to accept these instructions of law and
20 to apply them to the facts as you determine them. With respect
21 to legal matters, you must take the law as I give it to you.
22 If any lawyer has stated a legal principle different from any
23 that I state to you in my instructions, you are to follow my
24 instructions.

25 You are to consider these instructions together as a

1 whole; in other words, you're not to isolate or give undue
2 weight to any particular instruction. You must not substitute
3 your own notions or opinions of what the law is or what it
4 ought to be.

5 As members of the jury, you are the sole and exclusive
6 judges of the facts. You decide what happened. It is your
7 sworn duty to determine the facts based solely on the evidence
8 received in this trial. Any opinion I might have regarding the
9 facts is of absolutely no consequence.

10 The personalities and the conduct of counsel in the
11 courtroom are not in any way at issue. If you formed an
12 opinion of any kind as to any of the lawyers in the case,
13 whether favorable or unfavorable, whether you approved of or
14 disapproved of their behavior as advocates, that should not
15 enter into your deliberations at all.

16 The lawyers and I have had conferences at the bench
17 and other conferences out of your hearing. These conferences
18 involve procedural or evidentiary matters that are the
19 responsibility of the judge. They should not enter into your
20 deliberations at all.

21 A lawyer has a duty to object when the other side
22 offers testimony or other evidence that the other lawyer
23 believes is not admissible. It is my job to rule on those
24 objections. Why an objection is made or how I ruled on it is
25 not your concern. You should not draw any inference simply

1 from the fact that a lawyer objected to a question, or that I
2 sustained or overruled an objection.

3 You must evaluate the evidence calmly and objectively,
4 without prejudice or sympathy. You must be completely fair and
5 impartial. Your verdict must be based solely on the evidence
6 developed at this trial, or the lack of evidence. Our system
7 of justice cannot work unless you reach your verdict through a
8 fair and impartial consideration of the evidence. Under your
9 oath as jurors, you are not to be swayed by sympathy or
10 prejudice. You are to be guided solely by the evidence in this
11 case, and the crucial, bottom-line question that you must ask
12 yourselves as you sift through the evidence is: Has the
13 government proven each element of the charge against Mr. Gomez
14 beyond a reasonable doubt?

15 It is for you alone to decide whether the government
16 has proven that Mr. Gomez is guilty of the crime charged, and
17 you are to do so solely on the basis of the evidence, and
18 subject to the law as I explain it to you. If you let fear or
19 prejudice, or bias or sympathy, interfere with your thinking,
20 there is a risk that you will not arrive at a true and just
21 verdict.

22 If you have a reasonable doubt as to Mr. Gomez's
23 guilt, you should not hesitate for any reason to reach a
24 verdict of not guilty. But on the other hand, if you should
25 find that the government has met its burden of proving beyond a

reasonable doubt that Mr. Gomez is guilty, you should not hesitate because of sympathy or any other reason to reach a verdict of guilty.

The question of possible punishment must not enter into or influence your deliberations in any way. The duty of imposing a sentence rests exclusively upon me. Your function is to weigh the evidence in the case and to determine whether or not Mr. Gomez has been proven guilty beyond a reasonable doubt, solely on the basis of such evidence or lack of evidence. Under your oath as jurors, you cannot allow a consideration of the punishment that may be imposed on Mr. Gomez, if he is convicted, to influence your verdict in any way, or in any sense, to enter into your deliberations. Similarly, you cannot permit any feelings you might have about the nature of the crime charged to interfere with your decision-making process. Your verdict must be based exclusively upon the evidence or the lack of evidence in this case.

In reaching your verdict, you must remember that all parties stand equal before a jury in the courts of the United States. The fact that the government is a party and that the prosecution is brought in the name of the United States does not entitle the government or its witnesses to any greater consideration than that accorded to any other party. By the same token, you must give it no less consideration.

1 In reaching your decision as to whether the government
2 has sustained its burden of proof, you may not consider any
3 personal feelings you may have about Mr. Gomez's race,
4 religion, ethnicity, national origin, sex, or age. All persons
5 are entitled to the same presumption of innocence.

6 Mr. Gomez has pleaded not guilty. In doing so, he has
7 denied the charge in the indictment. As a result, the
8 government has the burden of proving the charge against him
9 beyond a reasonable doubt. This burden of proof never shifts
10 to a defendant for the simple reason that the law never imposes
11 upon a defendant in a criminal case the burden or duty of
12 testifying, of calling any witness, or of locating or producing
13 any evidence.

14 A defendant does not have to prove his innocence. To
15 the contrary, Mr. Gomez is presumed innocent until such time,
16 if ever, that you as a jury are satisfied that the government
17 has proven him guilty beyond a reasonable doubt.

18 Mr. Gomez began the trial here with a clean slate.
19 This presumption of innocence alone is sufficient to acquit a
20 defendant unless you as jurors are unanimously convinced beyond
21 a reasonable doubt of his guilt, after a careful and impartial
22 consideration of all the evidence. If the government fails to
23 sustain its burden, you must find Mr. Gomez not guilty.

24 I will now address reasonable doubt. What is
25 reasonable doubt? It is a doubt founded in reason, as opposed

to a doubt based on speculation, emotion, sympathy, or prejudice. It is a doubt that arises out of the evidence in the case, or the lack of evidence. It is a doubt that a reasonable person has after carefully weighing all the evidence. Reasonable doubt is a doubt that arises from your own judgment, life experience, and common sense when applied to the evidence.

If, after a fair and impartial consideration of all the evidence, you are not satisfied of the guilt of Mr. Gomez -- that is, if you do not have an abiding conviction of his guilt -- you must find him not guilty. In other words, if you have such a doubt as would cause you, as a prudent person, to hesitate before acting in matters of importance to yourself, then you have a reasonable doubt, and it is your duty to find Mr. Gomez not guilty.

On the other hand, if after a fair and impartial consideration of all the evidence, you do have an abiding conviction of Mr. Gomez's guilt -- in other words, a conviction you would be willing to act upon without hesitation and in an important matter in your own life -- then you have no reasonable doubt, and it is your duty to find Mr. Gomez guilty.

Reasonable doubt is not whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty. Reasonable doubt also does not mean beyond all possible doubt. It is practically impossible for a person to be absolutely and

1 completely convinced of any disputed fact that by its nature is
2 not susceptible to mathematical certainty. As a result, the
3 law in a criminal case is that it is sufficient for the
4 government to establish the guilt of a defendant beyond a
5 reasonable doubt, not beyond all possible doubt.

6 In determining the facts, you must rely on your own
7 recollection of the evidence. The evidence in this case is the
8 testimony of the witnesses, the exhibits received in evidence,
9 and the stipulations or agreements as to certain facts entered
10 into by the parties. When I sustained an objection to a
11 question, the answer that the witness may have given in
12 response to that question is not part of the evidence in this
13 case and may not be considered by you. You are likewise not to
14 consider a lawyer's questions as evidence. It is the witness's
15 answers that are evidence, not the questions.

16 When I ordered that testimony be stricken from the
17 record, you may not consider that testimony during your
18 deliberations.

19 The only exhibits that are evidence in this case are
20 those that were received in evidence. Exhibits marked for
21 identification but not admitted are not evidence, nor are
22 materials that were used only to refresh a witness's
23 recollection.

24 Witnesses sometimes have a failure of recollection
25 when testifying. In such circumstances, it is proper for the

lawyer questioning the witness to attempt to refresh his or her recollection. Where a document is used to refresh recollection, that document does not have to have been prepared by the witness, nor does it have to have been made contemporaneously with the events described in it. Where a witness states that a writing has refreshed the witness's memory, then the witness may proceed to testify as to the matters on which his or her memory was refreshed. That testimony is evidence. However, where a witness states that his or her recollection is not refreshed, any statements the lawyer may have made about the document used in the attempt to refresh the witness's recollection are not evidence.

As I told you at the outset of this case, arguments by lawyers are likewise not evidence, because the lawyers are not witnesses. The lawyers have no personal knowledge of what happened here. What they have said to you in their opening statements and in their closing arguments is intended to help you understand the evidence to reach your verdict. However, where your recollection of the evidence differs from what a lawyer has argued, it is your recollection of the evidence that controls. You must determine the facts based solely on the evidence received in this trial. In determining the facts, you must rely on your own recollection of the evidence. What the lawyers said in opening statements, in closing arguments, in objections, or in questions is not evidence.

1 I remind you also that nothing I have said during the
2 trial, or will say in instructing you on the law, is evidence.
3 Similarly, the rulings I have made during the trial are not any
4 indication of my views of what your decision should be.

5 It is for you alone to decide what weight, if any, to
6 give to the testimony of the various witnesses and to the
7 exhibits that have been received in evidence.

8 Generally, there are two types of evidence that you
9 may consider in reaching your verdict: direct evidence or
10 circumstantial evidence.

11 Direct evidence is testimony by a witness about
12 something he or she knows by virtue of his or her own senses --
13 something seen, felt, touched, or heard. For example, if a
14 witness testified that when he left his house this morning, it
15 was raining, that would be direct evidence about the weather.
16 Direct evidence may also be in the form of an exhibit.

17 Circumstantial evidence is evidence from which you may
18 infer the existence of certain facts. For example, assume that
19 when you came into the courthouse this morning, the sun was
20 shining and it was a nice day. Assume that the courtroom
21 blinds were drawn and you cannot look outside. As you're
22 sitting here, someone walks in with an umbrella, which is
23 dripping wet. A few minutes later, another person enters with
24 a wet raincoat. Now, you can't look outside the courtroom to
25 see whether it's raining, so you have no direct evidence of

1 that fact, but based on the facts that I have asked you to
2 assume, you could conclude that it had been raining.

3 That is all there is to circumstantial evidence. On
4 the basis of reason, life experience, and common sense, you
5 infer from one established fact the existence or nonexistence
6 of some other fact.

7 The matter of drawing inferences from facts in
8 evidence is not a matter of guesswork or speculation. An
9 inference is a logical, factual conclusion that you might
10 reasonably draw from other facts that have been proven. Many
11 material facts, such as what a person was thinking or
12 intending, are rarely easily proven by direct evidence. Often
13 such facts are established by circumstantial evidence.

14 Circumstantial evidence may be given as much weight as
15 direct evidence. The law makes no distinction between direct
16 and circumstantial evidence, but simply requires that before
17 convicting a defendant, the jury must be satisfied of the
18 defendant's guilt beyond a reasonable doubt, based on all the
19 evidence in the case, whether direct or circumstantial.

20 There are times when different inferences may be drawn
21 from the evidence. The government may ask you to draw one set
22 of inferences, while the defendant asks you to draw another.
23 It is for you, and for you alone, to decide what inferences you
24 will draw.

25 What is important here is the quality and

1 persuasiveness of the evidence relied on by a party, and not
2 the number of witnesses, the number or variety of exhibits that
3 a party introduced, or the length of time that that party spent
4 on a particular subject.

5 You should draw no inference or conclusion of any
6 kind, whether favorable or unfavorable, with respect to any
7 witness or party in the case, by reason of any question I posed
8 to a witness.

9 There is no legal requirement that the government
10 prove its case through any particular means. You're not to
11 speculate as to why the government used the techniques it did,
12 or why it did not use other techniques. Law enforcement
13 techniques are not your concern. Your concern is to determine
14 whether or not, based on the evidence or lack of evidence, the
15 government has proven Mr. Gomez's guilt beyond a reasonable
16 doubt.

17 The government has introduced evidence in the form of
18 transcripts of tape recordings of telephone conversations and a
19 meeting. These recordings were made in a lawful manner and did
20 not violate anyone's rights. You may consider the
21 conversations reflected in the transcripts along with all the
22 other evidence in the case. Whether you approve or disapprove
23 of the recording of these conversations may not enter into your
24 deliberations.

25 Because English is the language of court proceedings

1 in this country, it was necessary for the government to obtain
2 an English translation of each tape-recorded Spanish-language
3 conversation. The government has introduced transcripts
4 showing both the Spanish conversation and the English
5 translation. The transcripts of these conversations were the
6 subject of a stipulation that was read to you during the trial.
7 In the stipulation, the parties agreed that the English
8 translation set forth in the transcripts is accurate, and you
9 must rely on that translation in considering this evidence.

10 Some of the testimony you have heard was provided
11 through interpreters. As I told you at the outset of the
12 trial, where a witness's testimony was translated from Spanish
13 into English, you must base your decision on the testimony as
14 presented through the interpreter.

15 You should evaluate the credibility, believability,
16 and reliability of the witnesses by using your common sense.
17 Common sense is your greatest asset as a juror. Ask yourself
18 whether the witness appeared honest, open, candid, and
19 reliable. Did the witness appear evasive or as though he or
20 she was trying to hide something? How responsive was the
21 witness to the questions on direct examination in comparison to
22 the questions posed on cross-examination? You should also
23 consider the witness's ability to recall past events.

24 If you find that any witness has lied under oath at
25 this trial, you should review the testimony of that witness

cautiously and weigh it with great care. It is, however, for you to decide how much of the witness's testimony, if any, you wish to believe. Few people recall every detail of every event precisely the same way. A witness may be inaccurate, contradictory, or even untruthful in some respects and yet entirely believable and truthful in other respects. It is for you to determine whether such inconsistencies are significant or inconsequential, and whether to accept or reject all, or to accept some and reject the balance of, that witness's testimony.

In sum, it is up to you to decide whether the testimony of a witness is truthful and accurate, in part, in whole, or not at all, as well as what weight, if any, to give to that witness's testimony.

In evaluating the testimony of any witness, you may consider, among other things:

- The witness's intelligence;
- The ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- The witness's memory;
- Any interest, bias, or prejudice the witness may have;
- The manner of the witness while testifying, and
- The reasonableness of the witness's testimony in light of all the evidence in the case.

You should judge the defendant's testimony in the same

1 way that you judge the testimony of any other witness.

2 The government is not required to prove the essential
3 elements of the offense by any particular number of witnesses.
4 The testimony of a single witness may be sufficient to convince
5 you beyond a reasonable doubt of the existence of the essential
6 elements of the offense if you believe that the witness has
7 truthfully and accurately related what he or she has told you.
8 Similarly, the testimony of a single witness may provide the
9 basis for reasonable doubt if you believe that that witness has
10 testified truthfully and accurately.

11 You have heard argument that at some earlier time,
12 witnesses said or did something that is inconsistent with their
13 trial testimony.

14 Evidence of prior inconsistent statements was
15 introduced for the purpose of helping you decide whether to
16 believe a witness's testimony. If you find that a witness made
17 an earlier statement that conflicts with the witness's trial
18 testimony, you may consider that fact in deciding how much of
19 the witness's trial testimony, if any, to believe.

20 In making this determination, you may consider whether
21 the witness intentionally made a false statement or whether it
22 was an innocent mistake; whether the inconsistency concerns an
23 important fact, or whether it had to do with an insignificant
24 detail; whether the witness had an explanation for the
25 inconsistency; and whether that explanation accords with your

1 common sense.

2 It is exclusively your duty, based upon all the
3 evidence and your own good judgment, to determine whether the
4 prior statement was inconsistent, and if so how much, if any,
5 weight to give to the inconsistent statement in determining
6 whether to believe all, part of, or none of the witness's
7 testimony.

8 In deciding whether to believe a witness, you should
9 consider whether the witness has an interest in the outcome of
10 this case, or is biased in favor of or against one side or the
11 other. You should also consider evidence of any interest or
12 motive that the witness may have in cooperating with a
13 particular party. It is your duty to consider whether any
14 witness has permitted bias or interest to color his or her
15 testimony. If you find that a witness is biased, you should
16 view his or her testimony with caution, weigh it with great
17 care, and subject it to close and searching scrutiny.

18 Of course, the mere fact that a witness has an
19 interest in the outcome of this case does not mean that he or
20 she has not told the truth. It is for you to decide from your
21 observations, and applying your common sense, life experience,
22 and all the other considerations I have mentioned, whether the
23 possible interest of a witness has -- intentionally or
24 otherwise -- colored or distorted his or her testimony. You
25 are not required to disbelieve an interested witness; you may

1 accept as much of his or her testimony as you deem reliable and
2 reject as much as you deem unworthy of acceptance.

3 You heard testimony from Caronlay Ramon-Baez and
4 Antonio Jimenez-Baez, both of whom entered into cooperation
5 agreements with the government. These witnesses entered into
6 cooperation agreements with the government in hopes of
7 receiving a lesser sentence.

8 You cannot draw any conclusion or inferences of any
9 kind about the guilt of Mr. Gomez merely from the fact that
10 Mr. Jimenez-Baez and Ms. Ramon-Baez entered into cooperation
11 agreements with the government and pleaded guilty to crimes
12 that may be similar or related to the crimes with which
13 Mr. Gomez is charged. These witnesses decided to cooperate
14 with the government based on their evaluation of what was in
15 their best interest. Their decision to plead guilty and to
16 cooperate with the government is not evidence that Mr. Gomez
17 committed a crime.

18 A defendant may not be found guilty simply because he
19 associated with someone who decided to plead guilty and to
20 enter into a cooperation agreement with the government.
21 Moreover, you may not infer that Mr. Gomez is guilty of the
22 charged offense merely because he associated with or spoke with
23 others who committed crimes.

24 Let me also say that the government is entitled to
25 call as witnesses people who have committed crimes and who have

entered into cooperation agreements with the government.

Indeed, you may convict Mr. Gomez on the basis of such testimony if you find that it is credible and that it proves Mr. Gomez guilty beyond a reasonable doubt.

You should also be aware that it is not unusual for the government to rely at trial on the testimony of witnesses who admit to participating in criminal activity. The government must take its witnesses as it finds them, and frequently must use such testimony in criminal prosecutions because otherwise it would be difficult or impossible to detect and prosecute wrongdoers. For this reason, the law permits the use of testimony from cooperating witnesses, and you may consider such testimony in determining whether the government has met its burden of proving Mr. Gomez's guilt beyond a reasonable doubt.

You must scrutinize the testimony of a cooperating witness with special care and caution, however. The fact that a witness has stated that he or she participated in criminal conduct and entered into a cooperation agreement with the government may be considered by you as bearing on that witness's credibility. It does not follow, of course, that simply because a person has admitted committing crimes and has entered into a cooperation agreement with the government, that he or she is incapable of giving a truthful account of what happened. Moreover, it is of no concern of yours why the

1 government made an agreement with such a witness. Your sole
2 concern is whether the witness has given truthful testimony.

3 The testimony of a cooperating witness should be given
4 such weight as it deserves in light of all the facts and
5 circumstances before you, taking into account the witness's
6 candor, the strength and accuracy of the witness's
7 recollection, the witness's background and demeanor, and the
8 extent to which the witness's testimony is or is not
9 corroborated by other evidence in the case. As with other
10 witnesses, you may consider whether a cooperating witness has
11 an interest in the outcome of this case, and, if so, whether
12 that interest has affected the witness's testimony.

13 In this regard, you should bear in mind that a witness
14 who has entered into a cooperation agreement with the
15 government has an interest and motives different from those of
16 other witnesses. In evaluating the testimony of such a
17 witness, you should ask yourself whether the witness would
18 benefit more by lying or by telling the truth. Was the
19 witness's testimony influenced in any way by a belief or a hope
20 that he or she would receive favorable treatment by testifying
21 falsely, or did the witness believe that his or her interests
22 would be best served by testifying truthfully? If you believe
23 a witness was motivated by hopes of receiving a lesser
24 sentence, was the motivation one that would cause the witness
25 to lie, or was it one that would cause the witness to tell the

1 truth?

2 In sum, you should consider all the evidence in
3 deciding what weight, if any, to give to the testimony of a
4 cooperating witness. If you find that the testimony of a
5 cooperating witness was false, you should reject it. However,
6 if -- after a cautious and careful examination of the testimony
7 of a cooperating witness in light of all the evidence -- you
8 conclude that the witness told the truth, you may accept the
9 testimony as credible and act upon it accordingly.

10 As with any witness, the issue of credibility may not
11 be decided on an all-or-nothing basis. Even if you find that a
12 witness testified falsely in one part, you may still accept his
13 or her testimony in other parts, or you may disregard all of
14 that witness's testimony. That is a determination entirely for
15 you, the jury, to make.

16 You have heard testimony from witnesses employed by
17 law enforcement agencies. The fact that a witness is employed
18 by a law enforcement agency does not mean that the witness's
19 testimony deserves more or less consideration, or greater or
20 lesser weight, than that of any other witness. It is up to you
21 to decide, after reviewing all the evidence, what weight to
22 give the testimony of law enforcement witnesses.

23 Your verdict must be based solely upon the evidence
24 developed at trial, or the lack of evidence. It would be
25 improper for you to consider, in reaching your decision as to

whether the government sustained its burden of proof, any personal feelings you may have about the defendant's race, religion, national origin, sex, or age. Similarly, it would be improper for you to consider any personal feelings you may have about the race, religion, national origin, sex, or age of any witness or anyone else involved in this case. Both sides are entitled to a trial free of prejudice, and our judicial system cannot work unless you reach your verdict through a fair and impartial consideration of the evidence.

You may not draw any inference, whether favorable or unfavorable, as to either side from the fact that no person other than Mr. Gomez is on trial here. You may not speculate as to the reasons why other persons are not on trial. These matters are wholly outside your concern and have no bearing on your function as jurors.

There are persons whose names you heard during the trial but who did not appear to testify. You should not speculate as to what these persons would have testified to had they been called. Their absence should not affect your judgment in any way. You should keep in mind my instruction, however, that the law does not impose on a defendant the burden or duty of calling any witnesses or producing any evidence. It is the government's burden to prove beyond a reasonable doubt each element of the crime charged in the indictment.

There has been evidence that witnesses discussed the

1 facts of this case and their testimony with lawyers before
2 appearing in court.

3 Although you may consider that fact when you are
4 evaluating a witness's credibility, you should be aware that
5 there's nothing unusual or improper about a witness meeting
6 with lawyers before testifying. Indeed, it would be unusual
7 for a lawyer to call a witness to testify without such
8 preparation. The weight you give to the fact or the nature of
9 the witness's preparation for his or her testimony and what
10 inferences you draw from such preparation are matters
11 completely within your discretion.

12 The indictment in this case refers to various dates.
13 It does not matter if the indictment states that specific
14 conduct is alleged to have occurred on or about a certain date
15 and the evidence indicates that, in fact, it was on another
16 date. The law only requires a substantial similarity between
17 the dates alleged in the indictment and the dates established
18 through evidence at trial.

19 You have heard evidence in the form of stipulations,
20 or agreements, as to certain facts. Where the parties have
21 entered into an agreement as to certain facts, you must regard
22 the agreed-upon facts as true.

23 I will now turn to the law applicable to the specific
24 charge in this case.

25 As you know, the charge against Mr. Gomez is contained

1 in an indictment. An indictment is not evidence of the guilt
2 of a defendant. It is merely an accusation, a statement of
3 charge made against a defendant. It gives the defendant notice
4 of the charge against him, and it informs the court and the
5 public of the nature of the accusation. Given.

6 That an indictment is proof of nothing, a defendant
7 begins trial with an absolutely clean slate and without any
8 evidence against him.

9 The indictment here reads as follows:

10 "From at least in or about August 2014, up to and
11 including on or about December 7, 2014, in the Southern
12 District of New York and elsewhere, Sandy Gomez, the defendant,
13 and others known and unknown, intentionally and knowingly did
14 combine, conspire, confederate, and agree together and with
15 each other to violate the narcotics laws of the United States.

16 "It was a part and object of the conspiracy that Sandy
17 Gomez, the defendant, and others known and unknown, would and
18 did distribute and possess with intent to distribute controlled
19 substances, in violation of 21 U.S.C. Section 841(a)(1).

20 "The controlled substances Sandy Gomez, the defendant,
21 conspired to distribute and possess with the intent to
22 distribute was five kilograms and more of mixtures and
23 substances containing a detectable amount of cocaine, in
24 violation of 21 U.S.C., Section 841(b)(1)(A).

25 Mr. Gomez denies the charge in the indictment and

1 contends that the government has failed to prove this charge
2 beyond a reasonable doubt. As I have said, the indictment
3 itself does not constitute evidence that he committed this
4 crime.

5 In a moment, I will instruct you in detail on the
6 charge contained in the indictment. You must determine whether
7 the government has met its burden of proving Mr. Gomez's guilt
8 beyond a reasonable doubt.

9 As I just mentioned, the indictment charges Mr. Gomez
10 with participating in a conspiracy to violate the narcotics
11 laws of the United States.

12 A conspiracy is the kind of criminal partnership -- an
13 agreement of two or more persons to join together to accomplish
14 some unlawful purpose.

15 The crime of conspiracy to violate the narcotics laws
16 is an independent offense, separate and distinct from the crime
17 of actually distributing narcotics or possessing narcotics with
18 the intent to distribute them. Indeed, a defendant can be
19 found guilty of the crime of conspiracy to violate the federal
20 narcotics laws even where the substantive crime that was the
21 object of the conspiracy -- here, distributing and possessing
22 with intent to distribute cocaine -- was never actually
23 committed.

24 Conspiracy is a separate, stand-alone crime, and guilt
25 may be established even where the conspiracy is not successful

1 and no drugs are ever actually distributed or possessed with
2 the intent to distribute. The crime of narcotics conspiracy is
3 complete once the government has proven beyond a reasonable
4 doubt the existence of the charged conspiracy and that the
5 defendant willfully joined that conspiracy.

6 To meet its burden of proving the narcotics conspiracy
7 charged in the indictment, the government must prove the
8 following elements beyond a reasonable doubt:

9 First, the government must prove the existence of the
10 conspiracy charged in the indictment; in other words, that
11 between August 2014 and December 7, 2014, there was, in fact,
12 an agreement or understanding between two or more persons to
13 violate those provisions of the law that make it a crime to
14 distribute cocaine or to possess cocaine with the intent to
15 distribute it.

16 Second, the government must prove that Mr. Gomez
17 knowingly became a member of that conspiracy; that is, that he
18 knowingly associated himself with the conspiracy and
19 participated in the conspiracy to distribute cocaine, or to
20 possess cocaine with the intent to distribute it.

21 A conspiracy is a combination, agreement, or
22 understanding between two or more people to accomplish, by
23 concerted action, a criminal or unlawful purpose. Here, the
24 government claims that Mr. Gomez and others entered into an
25 unlawful agreement, the purpose of which was to distribute

1 cocaine or possess cocaine with the intent to distribute it.

2 The government contends that Mr. Gomez's coconspirators

3 included his brother, Jorge Gomez, and Caronlay Ramon-Baez.

4 You should be aware that Antonio Jimenez-Baez and the

5 government's source referred to as "Giovanni" cannot be

6 regarded as conspirators, because they were acting on behalf of

7 the government.

8 The gist, or essence, of the crime of conspiracy is an

9 unlawful agreement between two or more people to violate the

10 law. The first element of the crime of conspiracy thus has two

11 parts: the unlawful agreement, and the object of the

12 conspiracy.

13 To establish a conspiracy, the government is not

14 required to show that two or more people sat down around a

15 table and entered into a solemn pact, orally or in writing,

16 stating that they have formed a conspiracy to violate the law

17 and spelling out all the details of the plans and the means by

18 which the unlawful project is to be carried out, or the part

19 that each of the persons who is a party for conspiracy is going

20 to play.

21 When people undertake to enter into a criminal

22 conspiracy, much is often left to the unexpressed

23 understanding. Conspirators do not usually reduce their

24 agreements to a formal writing. They don't typically publicly

25 broadcast their plans. By its very nature, a conspiracy is

1 almost always secret in its origin and execution.

2 It is enough if two or more people, in some way or
3 manner, impliedly or tacitly, come to an understanding to
4 violate the law. Express language or specific words are not
5 required to indicate the assent or agreement to the conspiracy.
6 You need only find that two or more people entered into the
7 unlawful agreement alleged in the indictment to find that a
8 conspiracy existed. What the government must prove is that
9 there was a mutual understanding, either spoken or unspoken,
10 between two or more people to cooperate with each other to
11 violate the law and to accomplish an unlawful act.

12 In determining whether the government has proven the
13 unlawful agreement alleged in the indictment, you should
14 consider the proven acts and conduct of the alleged
15 coconspirators undertaken to carry out the apparent criminal
16 purpose. The adage "actions speak louder than words" is
17 applicable here. Often, the only evidence that is available is
18 that of disconnected acts that, when considered in connection
19 with one another, show a conspiracy or an agreement to secure a
20 particular result just as satisfactorily and conclusively as
21 more direct proof. As I have said, it is not necessary that
22 the conspiracy actually succeed for you to conclude that it
23 existed.

24 In deciding whether the conspiracy charged in the
25 indictment existed, you may consider all the evidence of the

1 acts, conduct, and statements of Mr. Gomez along with all the
2 evidence of the acts, conduct, and statements of those you
3 determine the government has proven were coconspirators of
4 Mr. Gomez, and the reasonable inferences to be drawn from that
5 evidence. When people enter into a conspiracy to accomplish an
6 unlawful deed, they become partners of one another in carrying
7 out the conspiracy. Accordingly, the reasonably foreseeable
8 acts or statements of any member of the conspiracy, committed
9 in furtherance of the common purpose of the conspiracy, are
10 deemed, under the law, to be the acts and statements of all the
11 of the members of the conspiracy, and all of the members of the
12 conspiracy are responsible for such acts or statements. This
13 rule applies even though such acts or statements were not made
14 or committed in Mr. Gomez's presence or were made and committed
15 without his knowledge.

16 Before you may consider the acts or statements of a
17 coconspirator in deciding the guilt of Mr. Gomez, however, you
18 must first determine that the acts were committed or statements
19 were made during the existence of, and in furtherance of, the
20 alleged unlawful scheme. If the acts were done and the
21 statements were made by someone whom you did not find to have
22 been a member of the conspiracy, or if they were not in
23 furtherance of the charged conspiracy, they may not be
24 considered by you in deciding whether Mr. Gomez is guilty.

25 It is sufficient to establish the existence of the

1 charged conspiracy that you find, beyond a reasonable doubt,
2 that the minds of at least two alleged conspirators met in an
3 understanding way, and that they agreed, as I have explained,
4 to work together to accomplish the objective of the conspiracy
5 charged in the indictment.

6 The second part of the first element relates to the
7 object, or objective, of the alleged conspiracy. Here, the
8 indictment charges that the object of the conspiracy was to
9 distribute cocaine or possess cocaine with the intent to
10 distribute it.

11 The government need prove only that the objective of
12 the conspiracy was either to distribute cocaine or to possess
13 cocaine with the intent to distribute it. The government need
14 not, but may, prove both. To convict Mr. Gomez, however, you
15 must be unanimous as to which objective was proven --
16 distribution of cocaine or possession of cocaine with the
17 intent to distribute it.

18 The quantity and purity of the drugs involved in the
19 alleged conspiracy are not elements of the crime charged, so
20 you need not be concerned with the quantity or purity in
21 determining whether Mr. Gomez is guilty.

22 However, as I will instruct you later, should you find
23 Mr. Gomez guilty of conspiracy to distribute cocaine or possess
24 cocaine with the intent to distribute it as charged in the
25 indictment, you will be asked to determine whether the

1 government has proven beyond a reasonable doubt that the
2 conspiracy involved five kilograms or more of cocaine, or if
3 not, proven by beyond a reasonable doubt that the conspiracy
4 involved 500 grams or more of cocaine.

5 I will now define the terms "distribute" and "possess
6 with intent to distribute."

7 The word "distribution" means the actual,
8 constructive, or attempted transfer of a drug. To "distribute"
9 simply means to deliver, to pass over, to hand over something
10 to another person, or to cause it to be delivered, passed on,
11 or handed over to another. Distribution does not require a
12 sale.

13 What does "possess with intent to distribute" mean?

14 I will begin with the concept of "possession." The
15 legal concept of possession is different from the everyday
16 usage of the term. Actual possession is what most of us think
17 of as possession; that is, having physical custody or control
18 of an object. A person need not have actual, physical
19 possession -- that is, physical custody of an object -- to be
20 in legal possession of it, however. If an individual has the
21 ability to exercise substantial control over an object, even if
22 he does not have the object in his physical custody, and that
23 person has the intent to exercise such control, then he is in
24 possession of that article. This is called constructive
25 possession.

Control over an object may be demonstrated by the existence of a working relationship between the person having such control and the person with actual physical custody. The person having control possesses the object because he has an effective working relationship with the people who have actual physical custody of the object, and because he can direct the movement or transfer or disposition of the object. In this manner, a businessman may possess things that are scattered throughout a number of stores or offices or installations around and about a city or a country.

More than one person can have control over the same quantity of drug. The law recognizes that possession may be sole or joint. If one person alone has actual or constructive possession of a thing, possession is sole. If more than one person has possession of it, as I have defined possession for you, then possession is joint.

"Possess with intent to distribute" simply means the possession of a controlled substance with the intention or purpose to "distribute" it to another person or persons. As I explained, to "distribute" means simply to transfer to another.

Sometimes it is possible to determine whether someone had an "intent to distribute" from the quantity of drugs that were possessed, although the possession of a large quantity of narcotics does not necessarily mean that an individual intended to distribute them. On the other hand, an individual may have

1 intended to distribute a controlled substance even if he did
2 not possess a large amount of it.

3 As I mentioned earlier, the ultimate success of the
4 conspiracy, or the actual commission of the crime that is the
5 object of the conspiracy, is not required. The offense alleged
6 here is simply the conspiracy, or unlawful agreement, to
7 distribute cocaine, or to possess cocaine with the intent to
8 distribute it.

9 If you conclude that the government has proven beyond
10 a reasonable doubt that the charged conspiracy existed, and
11 that the conspiracy had as its object one or more of the
12 illegal purposes alleged in the indictment, then you must next
13 determine whether Mr. Gomez participated in the conspiracy with
14 knowledge of its unlawful purpose and in furtherance of its
15 unlawful objectives.

16 The government must prove beyond a reasonable doubt
17 that Mr. Gomez willfully and knowingly entered into the
18 conspiracy with criminal intent -- that is, with a purpose to
19 violate the law -- and that he agreed to take part in the
20 conspiracy to promote and cooperate in its unlawful objectives.

21 The terms "knowingly" and "willfully" are intended to
22 ensure that if you find that Mr. Gomez joined the conspiracy,
23 you also conclude beyond a reasonable doubt that, in doing so,
24 he knew what he was doing; in other words, that he took the
25 actions in question deliberately and voluntarily, and that he

1 was aware of the generally unlawful nature of his acts.

2 The key question is whether Mr. Gomez entered into the
3 alleged unlawful agreement with an awareness of at least some
4 of its basic aims and purposes. Mr. Gomez's participation in
5 the conspiracy may be established by evidence of his own acts
6 or statements, as well as by the acts or statements of those
7 you find to be coconspirators and the reasonable inferences
8 which may be drawn from their acts and statements.

9 It is not necessary for the government to show that
10 Mr. Gomez was fully informed as to all the details of the
11 conspiracy in order for you to infer knowledge on his part. To
12 have guilty knowledge, a defendant need not know the full
13 extent of the conspiracy or all of the activities of all of its
14 participants. It is not even necessary for a defendant to know
15 every other member of the conspiracy. In fact, an individual
16 may know only one other member of a conspiracy and still be a
17 coconspirator. Nor is it necessary for a defendant to receive
18 any monetary benefit from his participation in a conspiracy, or
19 that he have a financial stake in the outcome. It is enough if
20 he participated in the conspiracy willfully and knowingly, as I
21 have defined those terms for you.

22 The duration and extent of a defendant's participation
23 in a conspiracy has no bearing on his guilt. A defendant need
24 not have joined the conspiracy at the outset. If an individual
25 joins a conspiracy at any time in its progress, he will be held

1 responsible for all that was done before he joined and all that
2 is done during the conspiracy's existence while he is a member.
3 Moreover, each member of a conspiracy may perform separate and
4 distinct acts. Some conspirators play major roles, while
5 others play minor roles in a scheme. An equal role is not what
6 the law requires. In fact, even a single act may be sufficient
7 to draw a defendant within the scope of a charged conspiracy.

8 I want to caution you, however, that a person's mere
9 association with a member of a conspiracy does not make that
10 person a member of the conspiracy, even when that association
11 is coupled with knowledge that a conspiracy exists. In other
12 words, knowledge without agreement and participation is not
13 sufficient. You may not find that Mr. Gomez is a member of the
14 conspiracy merely because of a friendship or a business
15 association with alleged coconspirators. Similarly, mere
16 discussion of common aims and interests does not necessarily
17 establish membership in a conspiracy. What is necessary is
18 that Mr. Gomez joined in the charged conspiracy with knowledge
19 of its unlawful purpose, and with an intent to aid in the
20 accomplishment of its unlawful objective.

21 In sum, a defendant, with an understanding of the
22 unlawful character of the conspiracy, must have intentionally
23 engaged, advised, or assisted in the purpose of furthering an
24 illegal undertaking. A defendant thereby becomes a knowing and
25 willing participant in the unlawful agreement -- that is to

say, a conspirator.

A conspiracy, once formed, is presumed to continue until either its objective is accomplished or there is some affirmative act of termination by its members. So, too, once a person is found to be a member of a conspiracy, he is presumed to continue his membership in the venture until its termination, unless it is shown by some affirmative proof that he withdrew and disassociated himself from it.

The indictment alleges that the narcotics conspiracy took place between August 2014 and December 7, 2014. The government is not required to prove that the alleged conspiracy started and ended on any specific date. It is sufficient if you find that the conspiracy was formed and that it existed for some time within or around the dates in the indictment.

In addition to the elements of conspiracy that I have discussed, you must also consider the issue of venue -- namely, whether any act in furtherance of the conspiracy occurred in the Southern District of New York. The Southern District of New York includes the Bronx, Manhattan, Yonkers, and Westchester County.

As to the conspiracy charged in the indictment, it is sufficient to find venue in the Southern District of New York if you find that Mr. Gomez or any coconspirator committed any act in furtherance of the conspiracy in this district during the existence of the conspiracy.

As to venue, and as to venue alone, the government's burden is not proof beyond a reasonable doubt. Instead, venue may be established by a preponderance of the evidence. A preponderance of the evidence means more likely than not. Thus, the government has satisfied the venue requirement if you conclude that it is more likely than not that any act in furtherance of the charged conspiracy took place in the Southern District of New York. If you find that the government has not proven venue by a preponderance of the evidence, then you must find Mr. Gomez not guilty.

If you conclude that the government has met its burden of establishing Mr. Gomez's guilt beyond a reasonable doubt, you will be asked to indicate on the verdict form the quantity of controlled substances that you have concluded was involved in the conspiracy. Accordingly, you will be asked to make findings whether the government proved beyond a reasonable doubt that the charged conspiracy involved five kilograms or more of cocaine, and if not, whether the government proved beyond a reasonable doubt that the charged conspiracy involved 500 grams or more of cocaine.

The jury must be unanimous as to the quantity determinations.

The purity of the controlled substance does not matter, however. Any mixture or substance containing a detectable amount of a controlled substance may be considered

1 by you in determining the type and quantity of drugs involved
2 in the offense.

3 In making your determination about the quantity of
4 cocaine involved in the charged conspiracy, you should include
5 cocaine that was involved in any act or acts in which Mr. Gomez
6 personally and directly participated. In making this
7 determination, you should also include any other controlled
8 substance involved in the conspiracy so long as the type and
9 quantity of the controlled substance was either known to
10 Mr. Gomez or was reasonably foreseeable to him, and was within
11 the scope of the criminal activity that he jointly undertook.
12 "Reasonably foreseeable" means that the defendant could have
13 reasonably anticipated the type and quantity of drugs involved
14 in the conspiracy.

15 That concludes my instructions concerning the specific
16 charge at issue in this case.

17 Ladies and gentlemen, before I proceed to the final
18 instructions, I'm going to take a brief recess and ask you to
19 return to the jury room. Please leave your instructions on the
20 seat. We'll resume very shortly. Don't begin discussing the
21 case yet. You can follow the deputy. Thank you. Please leave
22 the instructions on your seat. Thanks.

23 (Jury not present)

24 THE COURT: Please be seated. I have been concerned
25 today at several points about juror No. 1, Mr. Del Los Santos,

1 and that is because he has had great difficulty staying awake.
2 You may recall at one point during the summations I asked the
3 jury to stand and stretch and we took a break, and that was
4 because of my concerns about him. Later, I took a recess in
5 the middle, not the middle, towards the end of Ms. Todd's
6 summation, again because of the same concern that juror No. 1
7 was falling asleep.

8 Now, during the final instructions, he fell asleep
9 again. In fact, I don't know if you noticed, but one of his
10 colleagues, one of the other jurors had to wake him up when I
11 announced that we were taking a recess. Given his inability to
12 remain awake, despite the fact that I've tried to take steps to
13 allow him to refresh himself, I'm concerned at this point that
14 it's necessary to excuse him. But I'll hear from the parties.

15 MR. COOPER: The government has no objection, your
16 Honor.

17 THE COURT: Ms. Todd.

18 MS. TODD: Your Honor, Mr. Gomez objects on the basis
19 that he has sat through the entire trial, heard all the
20 evidence, and we're at the very end where the Court is going
21 through the instructions. I haven't seen him sleeping. I
22 can't see from where I'm at because of the monitor, of course,
23 but, Judge, we're at the very end.

24 THE COURT: I've already told you what I observed
25 during the summations.

MS. TODD: Right.

THE COURT: Obviously I've been focused on him all day because of concerns that I've mentioned, and during the charge, I noticed that initially he was bent over, very slumped, and so that raised concerns on my part, but initially, he was turning the pages of the charge, and that gave me comfort that he was following along. But at some point in the process, I noticed that the pages were no longer turning and there was no evidence that he was awake, and that's why I took the recess just now. As I said, when I told the jurors that we were taking a brief recess, he was dead asleep, and juror No. 7 had to nudge him to wake him up, so that's how deep his sleep had become.

I don't believe that I can permit someone who has slept through portions of the summations and a significant amount of the charge to remain on the jury. I certainly agree, it's unfortunate, because he has sat through the trial, but on the other hand, he's going to be asked to decide a case based on certain instructions of the law, and he has slept through a good part of it, including the part of it that deals with the specific charge in this case; in other words, the second section of the charge, which is focused on the specific charge brought against Mr. Gomez. That's the part we just completed, and that's the part that it's obvious to me he was dead asleep, and by the end of it, had to be woken up by a colleague on the jury. I don't see how I can proceed with him as a member of

1 the jury at this point.

2 MS. TODD: A moment to confer?

3 THE COURT: Sure.

4 MS. TODD: I have conferred with Mr. Gomez, your
5 Honor. We do not object to the Court's decision.

6 THE COURT: All right. Mr. Ruocco, would you explain
7 to juror No. 1 he's excused.

8 By the way, we had distributed a verdict sheet. Are
9 there any objections to the verdict sheet?

10 MR. EGAN: No, your Honor.

11 MS. TODD: No, your Honor.

12 THE COURT: Are we prepared to proceed?

13 (Jury present)

14 THE COURT: Please be seated.

15 Ladies and gentlemen, I'm going to turn to the final
16 instructions, which begin on page 28 of the charge that you
17 have been handed.

18 If, during your deliberations, you have any doubt as
19 to any of the testimony, you will be permitted to request that
20 portions of the trial transcript be sent back to you in the
21 jury room. If you want any testimony, please remember that it
22 is not always easy to locate what you might want, so be as
23 specific as you possibly can be in requesting portions of the
24 testimony.

25 All of the exhibits that have been received in

1 evidence will be sent into the jury room, except for the
2 dashcam video and the drug evidence. If you want to see the
3 video or you want to see the drug evidence, all you have to do
4 is ask. We'll bring you into the courtroom and we'll show it
5 to you here in the courtroom.

6 If you want any further explanation of the law as I
7 have explained it to you, you may also request that. As I
8 noted earlier, however, you may all take into the jury room
9 your copy of these instructions.

10 Any communications to me should be in writing, signed
11 by your foreperson, include the date and time, and be given to
12 one of the marshals. Please make any notes as clear and
13 precise as possible. Do not tell me or anyone else how the
14 jury stands on any issue until after a unanimous verdict is
15 reached.

16 Your function is to weigh the evidence in this case
17 and to decide whether the government has proven beyond a
18 reasonable doubt each of the essential elements of the crimes
19 with which the defendant is charged. It should say each of the
20 essential elements of the crime with which the defendant is
21 charged. If the government has succeeded in meeting its
22 burden, your verdict should be guilty; if it has failed to do
23 so, it should be not guilty. You must base your verdict solely
24 on the evidence and these instructions as to the law, and you
25 are obligated under your oath as jurors to follow the law as I

1 instruct you, whether you agree or disagree with the particular
2 law in question.

3 It is your duty as jurors to consult with one another
4 and to deliberate with a view toward reaching an agreement. As
5 you deliberate, please listen to the opinions of your fellow
6 jurors and ask for an opportunity to express your own views.
7 Every juror should be heard. No one juror should hold center
8 stage in the jury room and no one juror should control and
9 monopolize the deliberations.

10 Each of you must decide the case for yourself, but you
11 should do so only after a consideration of the case with your
12 fellow jurors, and you should not hesitate to change an opinion
13 when convinced that it is erroneous. Discuss and weigh your
14 respective opinions dispassionately, without with regard to
15 sympathy or to prejudice or favor for either side.

16 Your verdict must be unanimous. However, you are not
17 bound to surrender your honest convictions concerning the
18 effect or weight of the evidence for the mere purpose of
19 returning a verdict or solely because of the opinion of other
20 jurors. Each of you must make your own decision about the
21 proper outcome of this case based on your consideration of the
22 evidence and your discussions with your fellow jurors. No
23 juror should surrender his or her conscientious beliefs solely
24 for the purpose of returning a unanimous verdict.

25 Remember at all times, you are not partisans. You are

judges -- judges of the facts. Your sole interest is to determine whether the government has proven the defendant's guilt beyond a reasonable doubt.

If you are divided, do not report how the vote stands, and if you have reached a verdict, do not report what it is until you are asked in open court.

A number of you have taken notes during the trial. Your notes are to be used solely to assist you and are not to substitute for your recollection of the evidence in the case. Any notes that you may take are not evidence. The fact that a particular juror has taken notes entitles that juror's views to no greater weight than those of any other juror, and your notes are not to be shown to any other juror during your deliberations.

I have prepared a verdict form for you to use in recording your decision. Please use that form to record your verdict.

I referred a moment ago to a foreperson. It is customary for juror No. 1 to serve as the foreperson, and that is what we will do here. The foreperson doesn't have any more power or authority than any other juror, and his vote or opinion doesn't count for any more than any other juror's vote or opinion. The foreperson is merely your spokesperson to the Court. The foreperson will send out any notes, and when the jury has reached a verdict, the foreperson will notify the

marshal that the jury has reached a verdict, and you will come into open court and deliver your verdict.

After you have reached a verdict, your foreperson will fill in the form that has been given to you, sign and date it and advise the marshal outside your door that you're ready to return into the courtroom.

Each of you must be in agreement with the verdict that is announced in court. Once your verdict is announced by your foreperson in open court and officially recorded, it cannot ordinarily be revoked.

During your deliberations, all the rules of conduct concerning outside influences remain in effect. As I have instructed you a number of times, your verdict must be based solely on the evidence presented in this courtroom.

Accordingly, you are still not permitted to discuss this case with anyone but your fellow jurors, and you may not read anything in the newspapers, over the Internet, or elsewhere about this case. Also do not listen to or watch any reporting about this case if it should be broadcast on TV or over the radio.

Members of the jury, that concludes my instructions to you. I ask you to remain seated for just a minute while I confer with the lawyers to see whether there are any additional instructions they wish me to give.

(At sidebar)

1 THE COURT: Are there any exceptions to the charge?

2 MR. EGAN: Not from the government.

3 MS. TODD: No, your Honor.

4 THE COURT: OK.

5 (In open court)

6 THE COURT: Mr. Ruocco, would you swear in the

7 marshal.

8 (Marshal sworn)

9 THE COURT: Members of the jury, you may begin your
10 deliberations.

11 (At 2:30 p.m., the jury retired to deliberate upon a
12 verdict).

13 THE COURT: Please be seated. Have the exhibits been
14 gathered up to send to the jury room?

15 MS. CROWLEY: Almost, your Honor.

16 THE COURT: OK. And we'll send the verdict form in as
17 well. I have an extra copy of Defense Exhibits C, D, E, F, and
18 G, if necessary.

19 You're not required to remain in the courtroom. As
20 long as we can reach you right away, you're welcome to wait
21 wherever you're comfortable.

22 MS. TODD: Mr. Gomez has to run across the street to
23 meet with his pretrial service officer. I guess he wanted to
24 do that yesterday, but we left late, so I got an email from Mr.
25 Ruocco that he needs to see him. Is he permitted to do that,

or no?

THE COURT: As long as there's a way to reach him quickly so that he can return immediately if we get a note. Often we get a note right at the beginning, so I'm reluctant to have him go.

MS. TODD: Personally, I'd rather just have him here.

THE COURT: That might be best.

MS. TODD: Thank you, your Honor.

(Recess pending verdict)

(Jury not present)

THE COURT: Please be seated. We received a note from the jury, which I am marking as Court Exhibit 1. It's dated today. It reads as follows:

"Judge Gardephe.

"1. We have a question about the quantity being five kilos versus the measured amount being approximate 4.85 kilo. Is it the intent to bring five kilos or more or actual amount that matters?"

Second question, "Can we get the transcript of the prosecutor's first witness, Detective Garcia?"

And then there's a No. 3, which is crossed out. I'll read it to you just so you know what I know. It's crossed out, however. It says, "As to proving venue, we want to see the witness transcript of the --" and then it ends, and the whole sentence is crossed out. It appears that they were thinking about asking a question about venue and then they crossed it out.

Back to the first question: "We have a question about the quantity being five kilos versus the measured amount being approximate 4.85 kilo. Is it the intent to bring five kilos or more or actual amount that matters?"

And then the second question is the transcript of Detective Garcia's testimony. I assume that would not be difficult to pull together, both the direct and cross of

1 Detective Garcia.

2 As to the first question about quantity, my initial
3 sort of reaction to their question about quantity is to focus
4 them on the fact that conspiracy is about an agreement. The
5 response to their quantity question, seems to me, is to bring
6 them back to the idea that Mr. Gomez is charged with a
7 conspiracy, and so the question that they need to focus on is
8 whether there was a conspiratorial agreement that involved five
9 kilograms or more of cocaine. But what do the lawyers think?

10 MR. COOPER: That's fine for the government, your
11 Honor. One other point for consideration is the reasonable
12 foreseeability standard, which was part of the Court's charge
13 on conspiracy. Under Second Circuit law with respect to
14 quantity, a conspirator is responsible for the reasonably
15 foreseeable amount of narcotics involved in a conspiracy, so
16 the Court may want to consider including that concept as well.

17 THE COURT: All right. The language that Mr. Cooper
18 is referencing is on page 27, toward the bottom, and it reads
19 as follows:

20 "In making your determination about the quantity of
21 cocaine involved in the conspiracy, you should include cocaine
22 that was involved in any act or acts in which Mr. Gomez
23 personally and directly participated. In making this
24 determination, you should also include any other controlled
25 substance involved in the conspiracy so long as the type and

1 quantity of the controlled substance was either known to
2 Mr. Gomez or was reasonably foreseeable to him, and was within
3 the scope of the criminal activity that he jointly undertook.
4 'Reasonably foreseeable' means that the defendant could have
5 reasonably anticipated the type and quantity of drugs involved
6 in the conspiracy."

7 It does seem to me that that paragraph at the bottom
8 of 27 should be read to them. The other thing that I'm
9 proposing to do is to remind them that the crime that Mr. Gomez
10 is charged with is conspiracy to distribute narcotics or
11 possess narcotics with the intent to distribute them, and that
12 for purposes of their question, the issue is whether Mr. Gomez
13 entered into a conspiracy to distribute more than five
14 kilograms of cocaine.

15 Does that seem like it makes sense, Ms. Todd?

16 MS. TODD: Yes, your Honor.

17 THE COURT: There will be two components to the
18 response. The first component would be reminding them that
19 he's charged with a conspiracy, and then also to respond to
20 their question, the issue is whether the government has proven
21 beyond a reasonable doubt that Mr. Gomez entered into a
22 conspiracy to distribute or possess with intent to distribute
23 five kilograms or more of cocaine. And then I will read the
24 bottom paragraph on page 27.

25 Is that acceptable to the government?

1 MR. COOPER: Yes, your Honor.

2 THE COURT: Acceptable to you, Ms. Todd?

3 MS. TODD: Yes, your Honor.

4 THE COURT: OK. You can bring in the jury.

5 (Jury present)

6 THE COURT: Please be seated.

7 Ladies and gentlemen, I have your note, which I've

8 marked as Court Exhibit 1. It reads as follows:

9 "Judge Gardephe.

10 "1. We have a question about the quantity being five
11 kilos versus the measured amount being approximate 4.85 kilo.
12 Is it the intent to bring five kilos or more or actual amount
13 that matters?"

14 And then there's a second question, which reads: "Can
15 we get the transcript of the prosecutor's first witness,
16 Detective Garcia?"

17 And then there's a third question about venue, which
18 is crossed out. I'm assuming that you were initially thinking
19 about asking a question about venue but changed your mind, and
20 you crossed that out. We are pulling together the transcript
21 of Detective Garcia's testimony, and when we have those pages,
22 we'll send them directly into the jury room.

23 The first question about quantity, first of all, I
24 want to remind you, as I'm sure you're aware, that Mr. Gomez is
25 charged with conspiracy here and specifically with having

1 entered into an unlawful agreement to distribute cocaine or
2 possess cocaine with the intent to distribute it. To respond
3 to your question about quantity in your first query there, the
4 issue would be whether the government has proven beyond a
5 reasonable doubt that Mr. Gomez entered into a conspiracy, or
6 unlawful agreement, to distribute or possess with intent to
7 distribute five kilograms or more of cocaine.

8 I would also direct your attention to page 27 of the
9 instructions, which you have, which addresses the issue of
10 quantity as follows:

11 "In making your determination about the quantity of
12 cocaine involved in the charged conspiracy, you should include
13 cocaine that was involved in any act or acts in which Mr. Gomez
14 personally and directly participated. In making this
15 determination, you should also include any other controlled
16 substance involved in the conspiracy so long as the type and
17 quantity of the controlled substance was either known to
18 Mr. Gomez or was reasonably foreseeable to him, and was within
19 the scope of the criminal activity that he jointly undertook.
20 'Reasonably foreseeable' means that the defendant could have
21 reasonably anticipated the type and quantity of drugs involved
22 in the conspiracy."

23 That is my response to your questions. As I said,
24 with respect to the request for the transcript, we're working
25 on that, and as soon as we have the pages together, we'll send

1 them into the jury room. Thank you very much.

2 (Jury deliberations resumed at 3:45 p.m.)

3 THE COURT: All right. You'll put together the pages?

4 MR. EGAN: What's your preference on how we redact the
5 parts that are nonresponsive? Should we run back to our
6 computer? Is there a pen in here we can use?

7 THE COURT: You can put yellow stickies over it and we
8 can xerox the page for you. That works. And whenever both
9 sides have; agreed on the pages, my deputy will give them to
10 the marshal and he'll give them to the jurors. OK?

11 (Recess pending verdict)

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1 THE COURT: So the time now is a little after 5:20.
2 My inclination at this point is to bring the jury out, tell
3 them that we are prepared to stay as late as they want to stay,
4 so we are at their disposal. If they want to continue
5 deliberating, they are welcome to do so. On the other hand, if
6 they want to go home, that's OK, too. We will tell them that
7 and ask them to send us out a note telling us what their
8 preferences are.

9 (Jury present)

10 THE COURT: Ladies and gentlemen, it has been our
11 practice to break at 5:00. The time now is a little after
12 5:20. I wanted to bring you out to tell you that we are at
13 your disposal and we will stay as late as you wish this
14 evening. It's entirely up to you. On the other hand, if the
15 jury decided they preferred to go home and come back tomorrow,
16 that's fine, too. It's entirely up to you. We will stay as
17 late as you want us to stay. Just send us out a note and tell
18 us what you want to do. Thank you all very much.

19 (Jury deliberations resumed; time noted: 5:25 p.m.)

20 THE COURT: We will await their note and do whatever
21 it is they want to do.

22 (Recess pending verdict)

23 THE COURT: I have received a note from the jury which
24 I'm marking as Court Exhibit 2. It reads as follows: Judge,
25 we are close to reaching a verdict tonight. Foreman."

1 They will be staying and their expectation is they
2 will be able to reach a verdict this evening. We will await
3 their next note.

4 (Recess pending verdict)

5 THE COURT: We have a received a note from the jury.
6 I'm marking it as Court Exhibit 3. It reads as follows: Judge
7 Gardephe, we have reached a verdict, signed by the foreperson.

8 (Jury present).

9 THE COURT: Mr. Foreperson, has the jury reached a
10 verdict?

11 THE FOREPERSON: It has.

12 THE COURT: How do you find as to the charge,
13 conspiracy to distribute or possess with intent to distribute
14 cocaine, guilty or not guilty?

15 THE FOREPERSON: Guilty.

16 THE COURT: With respect to question 1A, did the
17 government prove beyond a reasonable doubt that the conspiracy
18 in which the defendant participated involved five kilograms or
19 more of a mixture or substance containing a detectable amount
20 of cocaine, yes or no?

21 THE FOREPERSON: Yes.

22 THE COURT: Mr. Ruocco, would you please poll the
23 jury.

24 THE DEPUTY CLERK: Yes, your Honor.

25 (Jury polled; each juror answered in the affirmative)

1 THE COURT: Ladies and gentlemen, I want to thank you
2 for your jury service. It was a short trial but it was an
3 important case, obviously, both for the government and for the
4 defendant. It was obvious to everyone here in the courtroom
5 the close attention that you paid to the evidence as it came
6 in. I hope you take enormous satisfaction in your jury service
7 because, as I said at the outset of the case, without people
8 like you willing to serve this important function, our system
9 of justice could not be what it is. Thank you very much and I
10 hope you take pride in your jury service. You are discharged
11 with the thanks of the Court. Thank you.

12 (Jury discharged)

13 THE COURT: Are there any applications with respect to
14 the jury's verdict?

15 MS. TODD: Yes, your Honor. Move for a directed
16 verdict.

17 THE COURT: Do you wish to brief the issue?

18 MS. TODD: Exactly, your Honor. I'd like an
19 opportunity to submit it in writing.

20 THE COURT: How long do you wish?

21 MS. TODD: Your Honor, can I have three weeks?

22 THE COURT: Today is November 10. Three weeks would
23 bring us to December 1.

24 How long does the government wish?

25 MR. COOPER: Two weeks, your Honor.

1 THE COURT: That would bring us until December 15.

2 Ms. Todd, I'll give you a week for reply, if you wish,
3 December 22. We will enter an order with those dates later
4 today.

5 Is there an application with respect to bail?

6 MR. COOPER: There is, your Honor. This is a
7 mandatory remand case under the Bail Reform Act. The
8 government seeks remand at this time.

9 THE COURT: Ms. Todd, anything you wish to say?

10 MS. TODD: Your Honor, I would ask that Mr. Gomez
11 continue to remain on bail until at least the Court decides the
12 Rule 29 motion or, if the Court is contemplating incarcerating
13 him, to at least give him an opportunity to get his affairs in
14 order. There are some young children at his home at the
15 moment. Kids came up from Texas. And at least so he can get
16 his affairs in order. I understand it's a mandatory remand
17 because he is convicted of a 10-year mandatory minimum
18 sentence.

19 THE COURT: Yes. In order for me not to remand
20 Mr. Gomez, there would be certain findings that I would have to
21 make under the Bail Reform Act. If my memory is correct, I
22 would have to find that there is a substantial likelihood that
23 a motion for acquittal or new trial would be granted or that
24 the prosecutor intends to recommend that no sentence of
25 imprisonment be imposed on the person. And I further would

1 have to find that by the standard of clear and convincing
2 evidence that Mr. Gomez is not likely to flee or pose a danger
3 to any other person or the community.

4 Without having read your motion, Ms. Todd -- it was a
5 short trial -- I carefully listened to all the evidence and I
6 cannot find that there is a substantial likelihood that a
7 motion for acquittal for a new trial will be granted. I'm
8 quite confident the government is not going to be recommending
9 a sentence of no imprisonment, but, Mr. Cooper, perhaps you can
10 address that aspect of the statute.

11 MR. COOPER: That's correct, your Honor. In fact, we
12 can't.

13 THE COURT: Ms. Todd, the status is that under the
14 applicable statute, which is 18, United States Code, Section
15 3143(a), which deals with the release or detention of a
16 defendant pending sentence or appeal, these are the types of
17 findings that I would have to make under 3143(a)(2). I'd have
18 to find that there is a substantial likelihood that a motion
19 for acquittal and new trial would be granted. I would have to
20 find that the prosecutor intends to recommend no sentence of
21 imprisonment. And I would have to then go on to find by clear
22 and convincing evidence that Mr. Gomez is not likely to flee or
23 pose a danger to the community. I cannot make the findings
24 necessary under either 3143(a)(2)(a)(i) or (a)(2). I cannot
25 find that there is a substantial likelihood that a motion for

1 acquittal or a new trial will be granted or that the prosecutor
2 intends to recommend a sentence of no imprisonment. Because
3 the statute is not satisfied, I am going to be remanding
4 Mr. Gomez pending sentencing.

5 MS. TODD: Before you do that, your Honor, just one
6 more thing. I believe, under the same statute, the Court can
7 find under exceptional circumstances -- I am trying to find
8 where that is -- to allow him to remain on bail.

9 And the circumstances are that there are young
10 children that came up from Texas yesterday. There is no adult
11 there at the moment and they are left there with the home
12 attendant until Mr. Gomez would need or I would need to get up
13 in the Bronx and try to sort that out.

14 He has been on pretrial supervision with a bracelet.
15 He has been in full compliance. There hasn't been any
16 incidences of violation. So I would ask the Court to consider
17 that and give him that short amount of time at least to take
18 care of his children and get them --

19 THE COURT: I'm happy to look at any provision that
20 you wish to direct my attention to. I've been looking at 3143
21 which deals with release or detention of a defendant pending
22 sentence or appeal.

23 MS. TODD: Can I have just like five minutes, your
24 Honor? I need to get my computer up.

25 THE COURT: Sure. I suspect that the provision you

1 are referencing is 3145 of Title 18.

2 MS. TODD: It sounds familiar. I'm just waiting for
3 my computer to boot up. I'm sorry, your Honor. My computer is
4 taking a little longer than it normally --

5 THE COURT: That's OK, Ms. Todd.

6 MS. TODD: Your Honor, my computer is apparently
7 updating. I think under Section 18 U.S.C. Section 3145, which
8 I don't have with me --

9 THE COURT: I can read it to you. I think I know the
10 provision that you are referencing. It's Section 3145, which
11 is entitled review an appeal of a release or detention order.
12 And paragraph C of Section 3145 reads as follows: An appeal
13 from a release or detention order or from a decision denying
14 revocation or amendment of such an order is governed by the
15 provisions of Section 1291 of Title 28 and Section 3731 of this
16 title. The appeal shall be determined promptly. A person
17 subject to detention, pursuant to Section 3143(a)(2) or (b)(2),
18 and who meets the conditions of release set forth in Section
19 3143(a)(1) or (b)(1) may be ordered released under appropriate
20 conditions by the judicial officer, if it is clearly shown that
21 there are exceptional reasons why such person's detention would
22 not be appropriate. Given your reference to exceptional
23 reasons, I suspected that this was the provision you had in
24 mind.

25 MS. TODD: Yes, your Honor.

1 THE COURT: So the exceptional reasons that you are
2 referencing are that Mr. Gomez's children are in the vicinity
3 and appropriate arrangements have not been made for their
4 custody.

5 MS. TODD: That is true, your Honor.

6 THE COURT: I guess you've also cited the fact that he
7 has been out on bail for some time and he has been compliant,
8 right?

9 MS. TODD: That is correct, your Honor. There hasn't
10 been any violations.

11 THE COURT: I'll hear from the government.

12 MR. COOPER: Your Honor, under the statute and the
13 case law it does not appear that those are exceptional
14 circumstances.

15 As a preliminary matter, the decision to bring minor
16 children into the area from out of state the week of a trial
17 and not arrange for child care is frankly baffling,
18 particularly in a case which carries with it such mandatory
19 minimum penalties like this one.

20 In terms of exceptional circumstances, your Honor,
21 under the statute, there are those preconditions from 3143 that
22 first have to be satisfied. And even assuming that they are,
23 it is only at that point that the Court turns to whether there
24 are exceptional circumstances. Family issues, although we have
25 not researched this exhaustively, exceptional circumstances in

1 cases that we are familiar with are situations, for example,
2 where there is a proactive cooperator who is going to be
3 closely monitored with the government and with the defense both
4 propose a bail package subsequent to a plea to a cooperation
5 agreement.

6 There is a Southern District reported case that we
7 just found. It's a case, 175 F.Supp.2d 537. It's a 2001 case
8 which looks like it's from Judge Sweet who appears to have
9 considered a situation analogous to this one where the argument
10 was that work and family commitments were exceptional
11 circumstances under the statute. Judge Sweet there held that
12 it would be inequitable to apply the exceptional circumstances
13 provision differently for drug traffickers convicted of
14 offenses who had family and who did not have family, and Judge
15 Sweet denied bail.

16 For those reasons, we believe that this isn't
17 exceptional circumstances.

18 I should also note, your Honor, that whatever
19 incentive the defendant had to flee prior to today, that
20 incentive goes up considerably now that he stands convicted,
21 now that he has heard all of the evidence, now that he has seen
22 from the stand a cooperator who testified against him, now that
23 he knows that he's facing a mandatory minimum 10 years in jail.

24 THE COURT: Have you calculated the guidelines range
25 that applies for Mr. Gomez?

1 MR. COOPER: It's somewhere around 10 years, your
2 Honor.

3 THE COURT: I guess based on what quantity of drugs?
4 There was discussion here of as much as 50 to 100 kilograms,
5 wasn't there?

6 MR. COOPER: Yes, your Honor. I think there was
7 evidence that it was 50 to a hundred kilos. That was from
8 Ms. Ramon-Baez. I believe the guidelines calculation, which
9 was a preliminary one that we did, was based on the 50 to
10 150-kilo weight for cocaine and that gets somewhere around 10
11 years. Of course, there is the potential that we need to
12 investigate for obstruction of justice based on the affidavits
13 submitted in connection with the suppression motion. We have
14 not taken a position yet on that, but that could increase the
15 guidelines.

16 THE COURT: I will say that I am concerned about the
17 potential applicability of a couple different enhancements.
18 One for perjury and, secondly, for witness tampering. I'm
19 putting counsel on notice that I'm concerned about the
20 potential applicability of those enhancements.

21 One of the things that troubles me here, Ms. Todd, is
22 that it was entirely foreseeable, at least in my view, that
23 Mr. Gomez might be convicted here. It was an extraordinarily
24 strong case and it was obvious to me it was an extraordinarily
25 strong case before the trial started based on the exhibits that

1 had been provided to me, particularly the taped transcripts, my
2 knowledge that someone directly involved in the conspiracy was
3 going to be testifying against Mr. Gomez. In my view, at
4 least, it was extremely foreseeable that Mr. Gomez would be
5 convicted.

6 So the question comes up, why weren't appropriate
7 arrangements made with respect to the children? You are
8 knowledgeable about the statute and the mandatory nature of the
9 remand and you were aware of the proof that was arrayed against
10 your client. So it has the feel of trying to create a
11 situation that would justify a bail application in a
12 circumstance where it was very foreseeable that we would be
13 where we are today, which is to say that Mr. Gomez would stand
14 convicted of this very serious crime in which he faces a
15 10-year mandatory minimum sentence. And no thought was given
16 as to what was going to happen to the children?

17 MS. TODD: With all due respect, your Honor, that's
18 not entirely the case. We discussed it. It was a significant
19 amount of thought given into the possibility that the jury
20 could come back with a verdict. That's always a part of the
21 discussion. I might have overestimated where we would end up
22 today, thinking that this might have gone through tomorrow.

23 While we were out in the hallway I tried reaching out
24 to his oldest son, the one that lives in New Jersey, trying to
25 coordinate the children. That's not been satisfied as of yet.

1 It certainly wasn't our intention to thwart the possibility
2 that the Court might put him in because I'm fully aware, having
3 done this before, that even under any drug conviction, even a
4 (b)(1)(c), and I've had a situation in front of Judge Kaplan
5 which is why I was trying to recollect how the statute applies,
6 that he would be facing possible remand. And this is a far
7 more serious offense obviously. It's a (b)(1)(A). So I wasn't
8 trying to be clever or --

9 THE COURT: I'm in no way criticizing you and I want
10 to make that clear. It's not intended to be critical of you at
11 all. My only point was that the place where we find ourselves
12 this evening could have been anticipated, in my view, and given
13 that it could have been anticipated, I guess what I'm saying
14 is, it should have been anticipated. Whether or not it should
15 have been anticipated, my situation is that I have to find that
16 these prerequisites are met under 3143. Assuming that 3145(c)
17 applies, it is still my conclusion that a remand is
18 appropriate.

19 My finding is that exceptional reasons do not exist
20 that would justify not remanding Mr. Gomez, and then with
21 respect to the provisions of Section 3143, they are not
22 satisfied here because I do not believe that there is a
23 substantial likelihood that a motion for acquittal or new trial
24 will be granted, and the government has represented it will
25 seek at least the 10-year mandatory minimum sentence.

1 I'm ordering Mr. Gomez remanded pending sentencing.

2 MS. TODD: If I can make one last application, your
3 Honor.

4 THE COURT: Yes.

5 MS. TODD: I would ask the Court to take a look at
6 *United States v. Disomma*, 951 F.2d 494, which allows some
7 discretion, at least overnight.

8 THE COURT: You wish me to look at the case now?
9 Because I will.

10 MS. TODD: Yes, your Honor.

11 THE COURT: I will take a brief recess. I will look
12 at the case. Any other authority you want to cite to me?

13 MS. TODD: Under *United States v. Lea*, 360 F.3d, 401
14 (2d Cir. 2004) where the circuit holds that the statute is
15 necessarily a flexible one and, in combination with other
16 factors, including family circumstances, may warrant release
17 pending sentencing. *United States v. Lippold*, 175 F.Supp.2d.
18 537 (2001). And *United States v. Sabhnani*, 529 F.Supp.2d, 377
19 (2007).

20 THE COURT: I will look at this authority now and come
21 back down.

22 MS. TODD: Thank you.

23 (Recess)

24 THE COURT: I have had an opportunity to review the
25 authorities cited by defense counsel and those cases, just for

1 the record, are *United States v. Lea*, 360 F.3d 401 (2d Cir.
2 2004; *United States v. Disomma*, 951 F.2d 494 (2d Cir. 1991);
3 *United States v. Lippold*, 175 F.Supp.2d, 537 (S.D.N.Y. 2001);
4 finally, *United States v. Sabhnani*, 529 F.Supp.2d, 377
5 (E.D.N.Y. 2007).

6 Those cases make clear that despite the mandatory
7 language in 3143(a)(2), the Court has discretion under 3145(c)
8 to nonetheless order that a defendant remain on bail even after
9 having been convicted of an offense under Title 21 in the
10 following circumstances: First, that the conditions of release
11 set forth in Section 3143(a)(1) have been met. Those
12 conditions are that a judicial officer finds by clear and
13 convincing evidence that the person is not likely to flee or to
14 pose a danger to the safety of any other person or the
15 community if released, so that's the first condition. The
16 second is that "it is clearly shown that there are exceptional
17 reasons why the defendant's detention would not be
18 appropriate." And that's a cite to 18, United States Code,
19 Section 3145(c).

20 Now, the first condition requires me to find by clear
21 and convincing evidence that Mr. Gomez is not likely to flee or
22 to pose a danger to the community if he's released. My
23 recollection is that Mr. Gomez has previously been convicted of
24 a serious drug offense; in fact, one that involved five kilos
25 of cocaine. Mr. Cooper, could you refresh my memory on the

1 details of that case.

2 MR. COOPER: Yes, your Honor. It was a conviction in
3 New York state court in 1998. I think it was criminal
4 possession of a controlled substance and the circumstances, to
5 our understanding, he was arrested in the back of a livery car
6 with five kilos of cocaine. I believe that his sentence there
7 was one to three years, or something in that range.

8 THE COURT: And unless I am mistaken, that was tied to
9 cooperation?

10 MR. COOPER: That's what he told Ms. Ramon-Baez. We
11 have not researched the issue. We are not sure whether that's
12 correct or not.

13 MS. TODD: I can enlighten the Court.

14 THE COURT: My question to you, Ms. Todd, is, assuming
15 that the assistant is correct, that Mr. Gomez was previously
16 convicted of a drug trafficking offense that involved five
17 kilograms of cocaine and given the fact that he has just been
18 found guilty by a jury here of a drug trafficking offense
19 involving five kilos of cocaine, how is it that you believe I
20 could find by clear and convincing evidence that he does not
21 pose a danger to the community?

22 MS. TODD: Your Honor, because the conviction in '98
23 is more than 10 years old. It's been quite a while. He has
24 been living a law-abiding life, meaning he has been working for
25 a number of years, stayed out of trouble for a number of years.

1 I recognize that this is a very serious crime. There
2 is no doubt about it, and we understand that. And, your Honor,
3 I don't believe that he is going to go out and commit another
4 crime within the next few days. I think he has done everything
5 that is required of him while he's been on release, and he's
6 been under very strict supervision, meaning he has got a
7 curfew. He can only go to work and home or to come see me or
8 any other circumstance that must be specifically worked out
9 with his pretrial services officer, and he has complied with
10 all of those during the entire time that he's been on release,
11 which has been more than a year with not one single infraction
12 of any violation whatsoever.

13 I think, your Honor, his past, while he's being
14 supervised on the instant case, indicates that he certainly can
15 comply with the rules, and I'm simply asking the Court, based
16 on the circumstances right now, to give him a little time to
17 sort everything out, and he can self-surrender at a time
18 designated by the Court.

19 THE COURT: The second part of the test is under
20 3145(c), and that directs me to consider whether there are
21 exceptional circumstances. Assuming that the provisions of
22 3143(a)(1) could be satisfied, the next question would be
23 whether there are exceptional circumstances within the meaning
24 of Section 3145(c).

25 In the *Lea* case, which is the most recent Second

1 Circuit authority on the point, the circuit said as follows:
2 Exceptional circumstances exist where there is a unique
3 combination of circumstances giving rise to situations that are
4 out of the ordinary. That's *U.S. v. Lea*, 360 F.3d at 403,
5 quoting *Disomma*, 951 F.2d at 497. The Court in *Lea* also cites
6 to *United States v. Lippold*, 175 F.Supp.2d 537 (S.D.N.Y. 2001)
7 and gives the following parenthetical: Collecting cases and
8 noting that circumstances that are purely personal do not
9 typically rise to the level of exceptional warranting release.

10 I've also looked at *U.S. v. Sabhnani* where the Eastern
11 District of New York repeated the statement in both *Lea* and in
12 *Lippold* to the effect that circumstances that are purely
13 personal do not rise to the level of exceptional circumstances
14 that would warrant release pursuant to Section 3145(c). In the
15 *Lippold* case the defendant sought continued release after
16 having been convicted at trial, arguing that he was the father
17 of three young children whom he supported financially and that
18 his seven-month-old son had recently been diagnosed with Bell's
19 Palsy. The Court in that case found that bail was not
20 appropriate, noting that incarceration "always is associated
21 with severe familial inconvenience." Citing *Sabhnani*, 529
22 F.Supp.2d at 382.

23 In the *Lea* case, the Second Circuit reversed a
24 district court judge who had granted a release, finding that
25 the circumstances in that case which involved a first offender.

1 So someone who had no criminal record, someone who was a
2 student and who was lawfully employed at the time, the Court
3 found that none of those factors qualified as exceptional.

4 My conclusion here, after having read the cases and
5 factored in Mr. Gomez's prior conviction, which was quite
6 serious in nature, is that none of the provisions of the key
7 provisions here that I must look to are satisfied.

8 First of all, given the fact that Mr. Gomez was
9 previously convicted of criminal possession of a controlled
10 substance in a case that involved five kilograms of cocaine, I
11 cannot find by clear and convincing evidence that he does not
12 pose a danger to the community if he's released. Understanding
13 that he has responsibilities with respect to his children, what
14 the cases teach me is that those circumstances are personal in
15 nature. They are not out of the ordinary and they don't meet
16 the standard of exceptional circumstances within the meaning of
17 Section 3145(c).

18 I do not find that a release would be appropriate.

19 Mr. Gomez will be remanded pending sentencing.

20 Is there anything else?

21 MR. COOPER: Not from the government. Thank you, your
22 Honor.

23 MS. TODD: Not from the defense. Thank you, your
24 Honor.

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